THE RISE OF EQUINE ACTIVITY LIABILITY ACTS

BY
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The law regarding animals can also affect those who own, use, or enjoy them. In recent years, the equine industry has become more vulnerable to liability as a result of recent court decisions undermining the traditional view that persons who participate in horseback riding assume the risk of injuries they incur. This paper examines six significant cases, as well as statutes passed by state legislatures to meet the challenges posed by these decisions. The legislative history and debate over the passage of a Connecticut bill are examined to illustrate the policy behind equine liability acts.

I. INTRODUCTION

For many years, courts have held that one who provides recreational activities owes no duty to protect customers from injuries resulting from the inherent risks of those activities.[1] This assumption of the risk doctrine has acted as a bulwark against liability until courts developed the principle of "secondary assumption of the risk" which some courts declare is only a component of comparative fault.[2] This paper will discuss six cases,[3]—*Harrold v. Rolling J Ranch*,[4] *Galardi v. Sea Horse Riding Club*,[5] *Bien v. Fox Meadow Farms*,[6] *Thornhill v. Deka-Di Riding Stables*,[7] *Tanker v. North Crest Equestrian Center*,[8] *Guido v. Koopman*,[9]—which have left the equine industry uncertain about the law regarding recreational facilities. The article also considers "equine liability laws" which

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1 *See*, RESTATEMENT OF TORTS § 496A (1965).

2 *See, e.g.*, Galardi v. Sea Horse Riding Club, 20 Cal. Rptr. 2d 270 (Cal. Ct. App. 1993).

3 *See also* Murphy v. Steeplechase Amusement Co., 166 N.E. 173 (N.Y. 1929) (plaintiff sued an amusement park for injuries suffered on a ride. Judge Cardozo held that by embarking on the ride, the plaintiff assumed the risk of injury. The court applied the principle of *volenti non fit injuria*, one who takes part in such a sport accepts the dangers inherent in it). *See* Julie I. Fershtman, *Equine Activity Liability Statutes*, 9TH ANNUAL NATIONAL CONFERENCE ON EQUINE LAW (May 1994) (transcript available in the University of Kentucky College of Law, Office of Continuing Legal Education).

4 Harrold v. Rolling J Ranch, 23 Cal. Rptr. 2d 671 (Cal. Ct. App. 1993).

5 *Galardi*, 20 Cal. Rptr. 2d 270.

6 Bien v. Fox Meadow Farms, 574 N.E.2d 1311 (Ill. App. Ct. 1991).

7 Thornhill v. Deka-Di Riding Stables, 643 N.E.2d 983 (Ind. Ct. App. 1994).

8 Tanker v. North Crest Equestrian Center, 621 N.E.2d 589 (Ohio Ct. App. 1993).

9 Guido v. Koopman, 2 Cal. Rptr. 2d 437 (Cal. Ct. App. 1991).

several state legislatures have passed in response to the concerns of the equine industry.

A. Harrold v. Rolling J Ranch

The facts of *Harrold* are as follows: Charlene and John Harrold became members of a resort owned by the defendant, Great Outdoor American Adventures Inc. (GOAA).[10] In November, 1983, they took a weekend vacation at the resort where they learned that GOAA offered horseback riding to its members through a nearby stable, Rolling J Ranch.[11] Charlene Harrold, two of her friends, and two young girls who chose to go horseback riding, were transported by GOAA to the stables, and given their choice of horses.[12] Rolling J employees saddled the horses and the party set out with two wranglers employed by Rolling J as escorts, one riding at the head of the group, the other behind it.[13] Before the ride began, the riders were instructed on such basics of horseback riding as how to signal and command the horses. The riders were also warned not to run the horses.[14]

About one half hour into the ride, Mrs. Harrold wrapped her reins around the saddle horn and started to remove her jacket.[15] While both of her arms were still in the sleeves and caught behind her, the horse suddenly spooked, throwing Harrold to the ground; she landed on her tailbone.[16] Unknown to her, on a previous ride, the same horse had spooked and thrown the rider when the latter waved a hat, but Rolling J Ranch neither warned Harrold of this prior incident or retrained the horse to avoid recurrence.[17]

Harrold sued GOAA and Rolling J Ranch for negligently failing to warn her of the horse's unstable temperament and its tendency to throw riders, failing to provide a safe horse to ride, negligently maintaining their premises, and willfully failing to warn her of the property's condition.[18] The defendants argued that Harrold, by virtue of her experience as a rider, knew of the risks involved in the sport and voluntarily assumed the risk when she began the ride.[19] The defendants pointed out that Harrold not only knew how to guide a horse to the left or right and how to make it stop, trot and gallop, but also how to bridle and saddle a horse.[20]

In its defense, Rolling J also cited a note Harrold prepared for the stable explaining how the accident occurred in which Harrold wrote: "I am an experienced rider and I understand that I was the second person

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10 Harrold v. Rolling J Ranch, 23 Cal. Rptr. 2d 671, 672 (Cal. Ct. App. 1993).
11 *Id.*
12 *Id.*
13 *Id.*
14 *Id.*
15 *Id.* at 673.
16 *Id.*
17 *Id.*
18 *Id.*
19 *Id.*
20 *Id.*

thrown by the same horse. I guess even the best are thrown . . . . Accidents happen."[21] Yet the evidence showed that Harrold never rode more than once a month, that she had never been a member of a riding club or academy, and that she had never taken care of, or fallen off of a horse.[22] Furthermore, Harrold had previously ridden only with one of her adult sons, and in the five years preceding the accident, had ridden only once.[23]

The issue for the court to resolve was whether a riding stable owes a duty of care to riders who rent horses for trail rides.[24] The court affirmed the summary judgment issued by the lower court stating that assumption of the risk is an absolute defense when public policy dictates that the defendant owes no duty of care to the class of which the plaintiff is a member.[25] The court did not begin its inquiry with the question of whether the plaintiff assumed the risk, but rather with the question of whether or not the rider subjectively comprehended the precise risk that the horse was easily spooked, and whether the defendant owed a duty of care to the plaintiff.[26] The court noted that even though Harrold chose the horse she wanted to ride, she did so unaware of its predisposition to spook.[27] Thus, the fact that Harrold chose the horse was irrelevant—Rolling J owed a duty of care to provide a safe horse, or to at least warn Harrold about dangerous ones.[28]

Citing an earlier California decision, the court stated that commercial operators of sports and recreational facilities owe a duty of care to their patrons.[29] This duty is to ensure that the facilities and related services provided do not increase the risk of injury above the level inherent in the sport or recreational activity itself.[30] The court stated, "A commercial operator violates this duty if, for instance, it sells or rents its patrons defective equipment which aggravates the patron's risk of injury."[31]

In *Harrold*, the court declared that there is no doubt that horseback riding, even in its tamest form, contains some inherent risk of injury, for example, "[a] horse can stumble or rear or suddenly break into a gallop," throwing the rider.[32] Yet, the court felt that these facts did not necessarily mean that the commercial operator of a horse riding facility owed no duty of care to those who rented its horses or could never be held liable for injuries suffered because a horse stumbled, reared, or suddenly broke into a gallop.[33] The court concluded that a commercial operator does have a

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21 *Id.*
22 *Id.*
23 *Id.*
24 *Id.* at 674.
25 *Id.*
26 *Id.*
27 *Id.*
28 *Id.*
29 *Id.* at 675 (quoting Knight v. Jewell, 834 P.2d 696 (Cal. 1992)).
30 *Id.* at 675-76.
31 *Id.* at 676.
32 *Id.*
33 *Id.*

duty to warn patrons of any animal's predisposition to behave in ways which add to the ordinary risk of horseback riding.[34]

The court noted that a whole host of duties can be ascribed to commercial providers of horse riding facilities, such as furnishing saddles and bridles in good repair, as well as proper maintenance of equipment, well shod horses and groomed trails.[35] The *Harrold* court stopped short of imposing a duty on stable owners to provide ideal riding horses because horses sometimes buck, bite, break into a trot, or stumble or spook on the trail when confronted by a frightening event such as a shadow or snake.[36] Nor can a stable provide horses who are impervious to the peculiar movements of a rider such as excessive spurring or waving a coat.[37] The court stated, "We view the sudden movement of a horse just as inherent in horseback riding as the presence of moguls on ski slopes are to skiers."[38]

The court went on to say that although public policy does not support the imposition of a duty on commercial operators of horse renting facilities to supply ideal horses, it would not eliminate a "duty to warn of a dangerous propensity in a given horse."[39] However, the court believed, "one prior incident of the subject horse having spooked does not rise to the level of dangerous propensity . . . [,]" it does, however, rise to the level of a "horse behaving as a horse with no incumbent duty on part of the stable operator."[40]

In the court's view, the imposition of a duty on the lessor of horses when a "horse acts as a horse" may cause commercial horseback operations to cease.[41] The high risk of liability in such a situation will hurt the self-insured and cause liability insurance to raise dramatically.[42] The court also believed that there was evidence that Harrold was contributorily negligent because she took her hands off the reins for a moment to remove her coat.[43] The court concluded:

> Consequently, we are unwilling and do not impose on purveyors of horse riders a duty when a horse acts as a horse any more than we would impose a general duty on commercial small boat operators when a wave suddenly moves a boat causing a passenger to be unbalanced and injured.[44]

Thus, the court granted summary judgment for Rolling J.[45]

The majority opinion was countered in a dissent by Judge Johnson. He agreed with the majority that a horse renting stable's duties ordinarily include the responsibility "to supply horses which are not unduly danger-

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34 *Id.*
35 *Id.* at 677.
36 *Id.*
37 *Id.*
38 *Id.*
39 *Id.*
40 *Id.*
41 *Id.*
42 *Id.*
43 *Id.*
44 *Id.*
45 *Id.*

ous and to warn patrons renting a given horse if that horse has evidenced a predisposition to behave in ways which add to the ordinary risk of horse riding."[46] The judge conceded that it was possible to imagine a horse renting facility catering to experienced riders—advertising the fact that the stable was "full of wild and dangerous horses just waiting to challenge the abilities of the best wranglers and equestrians."[47] If that were the case, the commercial operator would not owe a duty to remove the dangerous animals or to warn patrons about their dangerous propensities.[48]

However, the dissent pointed out that the nature of Rolling J's operation was not bronco riding, but afternoon trail riding.[49] The "nature and level of duty owed by the operator of the [average horse renting facility] is different and higher than it might be for one advertising a wild and wooly ride on untamed beasts."[50] The judge said that "public policy certainly support[ed] imposing a duty on commercial operators of horse renting facilities which are catering to supervised trail riders to supply suitable horses and to warn of any unsuitably risky propensity a given horse may exhibit."[51]

> There is no more social value in sending amateur, often inexperienced, riders on a trail ride with horses known to have unsuitable propensities [of which riders are unaware,] than there is in sending people onto the freeways with defectively designed or manufactured cars, or putting them on a dangerously maintained ferris wheel, or sending them out into the Pacific in a rented sailboat which turns out to have torn sails, a broken rudder, and a hole in the bottom.[52]

Judge Johnson conceded that there was evidence that Harrold had been contributorily negligent by taking her hands off the reins to remove her coat, but noted that "[p]rimary assumption of the risk does not apply properly to bar recovery completely in any case, where as here, the human endeavor involved is one in which society is best served by requiring the class of which the defendant is a member to exercise due care to those in Harrold's class."[53] The dissent summarized by saying that had the issue gone to trial, the jury, weighing the degree of negligence exhibited by Harrold and that of Rolling J Ranch, would have likely levied a financial award to Harrold that would "encourage safer behavior by both the commercial horse riding facilities and those who rent from them."[54]

The dissent was convinced that Harrold's uncontradicted allegations that the horse possessed an unstable temperament and a tendency to

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46 *Id.* at 678 (Johnson, J., dissenting) (quoting majority opinion).

47 *Id.* (Johnson, J., dissenting).

48 *Id.* (Johnson, J., dissenting).

49 *Id.* (Johnson, J., dissenting).

50 *Id.* (Johnson, J., dissenting).

51 *Id.* (Johnson, J., dissenting).

52 *Id.* (Johnson, J., dissenting).

53 *Id.* (Johnson, J., dissenting).

54 *Id.* (Johnson, J., dissenting).

throw riders,[55] and that Rolling J had or should have had knowledge of this dangerous disposition, was enough to create a triable issue of fact.[56] If the horse had an unstable temperament and a tendency to throw riders, the judge believed that Rolling J's behavior constituted a breach of duty to Harrold by supplying her with a horse with these traits. A riding stable, at a minimum, has a duty to warn of a horse's dangerous propensities.[57] The judge inquired, "[h]ow many riders does a horse get to throw before an animal is deemed to be an inappropriate mount? How many bucking incidents does it take before the horse's commercial owner has a duty to warn unlucky amateur riders about the horse's proclivities?"[58] The fact that this horse bucked off two riders in a rather short time span supports the inference that the horse had a pre-existing disposition to spook.[59] The judge, however, did acknowledge that the inference of the pre-existing predisposition would be stronger if Harrold had produced evidence that the horse had thrown a dozen riders.[60]

B. Galardi v. Sea Horse Riding Club

Another case decided in 1993 by a California court was *Galardi v. Seahorse Riding Club*.[61] Leslie Galardi was an accomplished equestrian who sustained personal injuries when she fell from a horse while training for a horse show. Galardi sued two defendants, the instructor, Lisa Jacquin, and the owner of the stables, Judy Martin, d/b/a Seahorse Riding Club.

The complaint alleged that the defendants had "negligently, instructed, supervised and controlled Galardi's activities, including, but not limited to causing Galardi to jump over fences that were unreasonably and unnecessarily high for the circumstances."[62] Galardi further alleged that the fences were improperly designed, located and spaced, and that she had been advised by the instructor to jump the fences even though they were placed in an improper direction.[63] The trial court granted the defendant's motion for summary judgment which was based on the assumption of the risk doctrine.[64]

Unlike Harrold, an occasional rider, the record established that Galardi regularly rode a thoroughbred horse.[65] She had appeared for several years in horse shows involving performance jumps and obstacles of various types; on many occasions she had ridden horses which had either

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[55] Rolling J failed to produce any evidence that the horse it rented Harrold lacked any dangerous propensities. *Id.* at 679 (Johnson, J., dissenting).

[56] *Id.* (Johnson, J., dissenting).

[57] *Id.* (Johnson, J., dissenting).

[58] *Id.* at 680 (Johnson, J., dissenting).

[59] *Id.* (Johnson, J., dissenting).

[60] *Id.* at 681 (Johnson, J., dissenting).

[61] Galardi v. Sea Horse Riding Club, 20 Cal. Rptr. 2d 270 (Cal. Ct. App. 1993).

[62] *Id.* at 271.

[63] *Id.* at 272.

[64] *Id.*

[65] *Id.*

balked at a jump or missed a stride when taking a jump; she had observed more than fifty horse-related injuries; and she understood that horse jumping created a greater risk of injury to the rider than does riding on flat terrain.[66]

Galardi's injury occurred on September 9, 1984, when she was at defendant's riding club preparing for an upcoming horse show with her horse, Tomboy.[67] Used exclusively by Galardi, Tomboy had done very well in jumping classes at A-rated shows during the previous four years.[68] Galardi was practicing a one-stride jump combination which consisted of two individual jumps set up so that the horse took one stride between each jump.[69] During the practice, Lisa Jacquin, an instructor at the riding club, twice raised the height of the fences without lengthening the distance between each fence, and instructed Galardi to ride through the course backwards.[70] Galardi knew that the jumps had been raised but not lengthened and was concerned.[71] Tomboy successfully jumped the first obstacle, but landed too close to the second and, unable to take a stride, jumped into the air, knocked down the second jump, and caused Galardi to lose her balance and fall. She sustained injuries to her coccyx and vertebrae.[72]

The issue for the court was whether the case involved secondary assumption of the risk. The California Supreme Court explained that "primary assumption of the risk cases are those in which the defendant has no duty to protect the plaintiff from a particular risk."[73] In secondary assumption of risk cases, "the defendant does owe a duty of care to the plaintiff and has some liability even though the plaintiff knowingly encounters a risk of injury caused by the defendant's breach of that duty."[74]

The California Supreme Court stated that although there is generally no legal duty to eliminate or protect a rider against the risks inherent in the sport, there is a duty to use due care, and not to increase the risks to a participant beyond those inherent in the activity.[75] The court offered two caveats: the nature of the defendant's duty depends heavily on the nature of the sport itself; and, the scope of legal duty owed by a defendant will also depend on the defendant's relationship to the sport.[76]

The court noted that the sport of horse jumping has the inherent risk that both horse and rider will fall and suffer injury.[77] "The basic competitive character of the activity involves engaging in increasingly higher jumps at shorter intervals until, at some point, competitors can no longer

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66 *Id.*
67 *Id.*
68 *Id.*
69 *Id.*
70 *Id.*
71 *Id.*
72 *Id.*
73 *Id.* at 273.
74 *Id.* (quoting Knight v. Jewett, 834 P.2d 696, 703 (Cal. 1992)).
75 *Id.*
76 *Id.*
77 *Id.* at 274.

clear the obstacles without substantial contact."[78] Thus, collisions and falls are integral parts of the sport, and the riders can fall from the horse as the result of other conditions as well.[79]

Although the risks Galardi knowingly encountered during her training were raised jumps, shorter intervals, and reversed riding directions, the occasion of Galardi's fall was not during competition with other riders, but in a training session where she was in the hands of the defendants who were hired to instruct and coach her.[80] While co-riders in a competition would not have any special duty of care to Gilardi during a competition to insure she did not fall, the riding club certainly had a duty to avoid an unreasonable risk of injury to Galardi and to take care that the jumping array was not beyond her capability.[81]

The judge conceded that the risk of injury in horseback riding and jumping cannot be eliminated, and that the risk created the challenges that defined the sport.[82] However, he found that the evidence presented at trial created the following question of fact for the jury: did the stable which had knowledge and experience about horse jumping, superior to Galardi's, negligently deploy the jumps at unsafe heights or intervals and thereby breach its duty to her?[83]

The court found that Gilardi's case fell into the category of secondary assumption of the risk because it raised the issue of the coach's or instructor's negligence during training.[84] Thus, the court left it to the trier of fact to consider comparative fault negligence, the relative responsibilities of the parties, and the proper apportionment of loss resulting from Gilardi's injury.[85]

C. Bien v. Fox Meadow Farms

A case similar in facts and circumstances to *Gilardi* and *Harrold* was an Illinois case, *Bien v. Fox Meadow Farms*.[86] Sandy Bien had been taking horseback riding lessons weekly at Fox Meadow from August 2, 1986 until she was injured.[87] When she began her riding program, Bien was told to sign a document "for insurance purposes."[88] Bien did not remember reading the document before signing it, but thought that she needed to sign it so that Fox Meadow could "add to her insurance."[89] There was also a lesson schedule on the back of the document and one of the defendants

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78 *Id.*
79 *Id.*
80 *Id.*
81 *Id.*
82 *Id.*
83 *Id.*
84 *Id.*
85 *Id.*
86 Bien v. Fox Meadow Farms, 574 N.E.2d 1311 (Ill. App. Ct. 1991).
87 *Id.* at 1313.
88 *Id.*
89 *Id.*

signed as a witness.[90] Bien paid a $15.00 fee for each day's activities, but never again signed a document during the time she took lessons, even though she continued to pay a fee each time she took a lesson.[91] On February 28, 1988, Bien had a lesson with defendant Johnson—an independent contractor for Fox Meadows—who directed her to ride a horse named Scout; Bien did not want to ride Scout because of his tendency to "thrash his head after a jump."[92] She only rode Scout to avoid having to ride Sunny, a horse that Bien found to be reckless and unpredictable.[93]

After her first jump, Scout thrashed his head, and Bien told Johnson; Johnson merely told her to pull the reins tighter after the jump.[94] After her second jump, Bien pulled the reins tighter but again observed the same thrashing, so Johnson told her to pull the reins even tighter the next time.[95] As she was completing her third jump, she followed Johnson's instructions and pulled the reins even harder.[96] Approximately twenty feet past the jump, Scout began violently thrashing his head and threw Bien off his back causing her injury.[97]

Bien sued Fox Meadows, Yackley, and Johnson. The first obstacle she encountered was the release that she had signed. The court declared that such releases have generally been upheld, noting that in the language of the release, Bien had assumed "all risks of loss that may be sustained . . . or which may hereinafter occur on account of, or in any way, growing out of . . . said equestrian activities."[98]

The court cited a 1988 case, *Harris v. Walker*, in which Harris rented a horse from Walker's riding stables which threw off Harris when it became spooked.[99] Like Bien, Harris had signed an exculpatory agreement relieving the riding stables from any liability that might be incurred "while on the premises or for any injury which may result from horseback riding."[100] Although the *Harris* court found that the terms of the release contained broad language which encompassed Harris' injury, the *Bien* court found a key difference in the cases, namely, that Harris was an experienced rider while Bien was a beginner.[101] Bien also argued that *Harris* didn't apply, because *Harris* made an exception for "the most inexperienced of horseback riders [like Bien, who] would not understand that under certain circumstances a horse may cause a rider to fall."[102] In addition, Bien argued that *Harris* did not apply since Harris merely rented a horse while Bien was on Fox Meadow's property for riding lessons, and

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90 *Id.*
91 *Id.*
92 *Id.*
93 *Id.*
94 *Id.*
95 *Id.*
96 *Id.*
97 *Id.*
98 *Id.*
99 *Id.* at 1315 (citing Harris v. Walker, 519 N.E.2d 917 (Ill. 1988)).
100 *Id.* (quoting *Harris*, 519 N.E.2d at 919).
101 *Id.*
102 *Id.*

because Harris admitted that he had read and fully understood the release while Bien neither read the release nor understood that she was signing such a document.[103]

Bien claimed that she thought she signed a release so she could be included in Fox Meadow's insurance coverage; however, the court found that she still failed to read the document even though it contained the words "caution: read before signing" and "release" above the signature line.[104] In addition, the court found that the document was captioned "Release" and Bien did not argue that she was fraudulently induced to sign it.[105] Despite the differences in the case from *Harris*, the court came to the same conclusion, namely that Bien was not entitled to relief simply because she failed to exercise reasonable care by not reading the release before signing it.[106]

D. Thornhill v. Deka-Di Riding Stable

A similar case decided in Indiana regarding equine liability was *Thornhill v. Deka-Di Riding Stable*.[107] Thornhill attended a YMCA Women's Wellness Weekend held at Camp Crosley on May 19-21, 1989.[108] On Saturday, May 20, Thornhill went horseback riding at Deka-Di Riding Stables, where her horse bolted, causing her to fall and sustain injuries.[109] Since horseback riding had been advertised as an optional activity during the Weekend, Thornhill had to pay an additional fee in order to participate; however, she received a discount pursuant to a longstanding arrangement between the YMCA and the stable.[110]

Prior to embarking on the trail ride, Thornhill asked Deka-Di's staff for a gentle horse and was assured that the chosen mount, Chantasy, was gentle.[111] Thornhill's only previous training had been informal riding lessons when she was thirteen, and chaperoning a church youth group outing in 1978.[112] Thornhill claimed that neither the YMCA staff nor Deka-Di staff gave riders any instructions on safe riding, but the YMCA claimed such instructions were given.[113]

Thornhill also offered evidence that during the ride the trail leader allowed the horses to get too far apart and allowed them to gallop up a muddy hill.[114] After galloping, Thornhill's horse suddenly bolted, and although she pulled the reins and yelled "whoa," she lost control of the

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103 *Id.*
104 *Id.*
105 *Id.*
106 *Id.* at 1315-16.
107 Thornhill v. Deka-Di Riding Stables, 643 N.E.2d. 983 (Ind. Ct. App. 1994).
108 *Id.* at 985.
109 *Id.*
110 *Id.*
111 *Id.*
112 *Id.*
113 *Id.*
114 *Id.*

animal.[115] Thornhill testified that she later learned from the trail leader that Chantasy was known to be temperamental, but neither defendant claimed to be aware of any problem with the horse.[116] Thornhill argued that the YMCA and Deka-Di's longstanding relationship gave rise to a duty to exercise ordinary and reasonable care for her safety, and that YMCA supervisors actively participated in the trail ride even if it was not a part of their duties.[117] Thornhill alleged that she relied on the supervisors to keep the trail ride and all camp activities safe.[118]

The court concluded that the YMCA had a relationship with Thornhill which gave rise to a duty, and that it was foreseeable that a person could be thrown from a horse and injured.[119] The YMCA argued that public policy weighed against the imposition of a duty which would be "tantamount to making [the YMCA] a babysitter of a 45 year old adult."[120] The court disagreed, and held that public policy favored imposing a duty on the YMCA, which attracted participants to the weekend by offering horseback riding as part of the activities and by being directly involved in the organization of the trail ride. Under these facts, the court concluded that the YMCA owed a duty to Thornhill to provide a safe trail ride, but the issue still remained whether this duty had been breached.[121]

Thornhill argued that the YMCA breached its duty by failing to warn of the dangers of the horse, failing to provide safety equipment, not adequately supervising the trail ride, not intervening when the ride became dangerous, and neglecting to aid Thornhill after she fell.[122] The YMCA countered that even if it did owe a duty to Thornhill, that duty was not breached because the YMCA did not have prior knowledge of the horse's temperament.[123] The evidence was on both sides of the issue. There was evidence that a Deka-Di trail leader believed that Chantasy was temperamental, but there was also evidence that Chantasy was a gentle horse and had never been dangerous to a rider.[124] Evidence that the trail leader caused the horse to become excited by galloping it up a muddy hill, also showed that the trail leader was inexperienced.[125] Some evidence showed that the YMCA staff members did nothing to keep riders at a safe pace, while other evidence showed that the ride was conducted in a safe manner.[126]

The YMCA argued that Thornhill knowingly assumed the risk because she was familiar with horses and knew horses could throw riders, but Thornhill claimed that she did not understand and agree to assume the

115 *Id.*
116 *Id.* at 985-86.
117 *Id.* at 986.
118 *Id.* at 987.
119 *Id.*
120 *Id.* (quoting Appellee's Br., at 36).
121 *Id.*
122 *Id.*
123 *Id.*
124 *Id.*
125 *Id.*
126 *Id.* at 988.

risk that the trail leader would gallop horses up a muddy hill causing the horse to bolt.[127] The court held as a matter of law that the YMCA owed a duty to Thornhill to provide a safe trail ride; however, it held that the questions regarding breach of duty and assumption of risk were for the jury to decide.[128]

E. Tanker v. North Crest Equestrian Center

The presence of a release was at issue in *Tanker v. North Crest Equestrian Center*.[129] Kathleen Tanker arranged to take horseback riding lessons from North Crest, but before beginning her lessons, she signed a document entitled "release" which stated that she assumed "full responsibility and liability" for any personal injuries associated with riding any horse at the equestrian center.[130] She also agreed to indemnify North Crest for any expenses, legal fees, judgment or costs arising out of any loss or injury sustained.[131]

During a lesson from instructor Phillip Kast, Tanker was instructed to drop the reins of the horse she was riding.[132] Although Kast was trying to control the horse with a lunge line and whip, the horse bolted and threw Tanker, who broke her back and sustained other injuries.[133] Tanker sued both North Crest and Kast, but they countered that they were free from liability because Tanker assumed the risk of her injuries.[134] Tanker submitted an affidavit that she did not intend to release the defendants from liability for negligence; however, Tanker admitted that due to the ambiguity of the release, she read it as an indemnification agreement.[135]

The court agreed with Tanker and held that the indemnity provisions of the agreement could not be construed to release the defendants from liability.[136] Additionally, whether or not the language of the document was so general as to make it meaningless was a question for the jury.[137] The court declared that a release which is so general that it includes claims which the releasor was ignorant of and which were not within the contemplation of parties when it was executed, will not be effective as a bar to recovery for a claim of negligence.[138]

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127 *Id.*

128 *Id.*

129 Tanker v. North Crest Equestrian Ctr., 621 N.E.2d 589 (Ohio Ct. App. 1993).

130 *Id.*

131 *Id.*

132 *Id.*

133 *Id.* at 590.

134 *Id.*

135 *Id.*

136 *Id.*

137 *Id.* at 591.

138 *Id.*

F. *Guido v. Koopman*

Guido v. Koopman also involved a horseback rider who sustained injuries after being thrown during a lesson.[139] On September 29, 1987, while inquiring about lessons from Koopman, Guido signed a document releasing defendants from all claims which could arise from injury to the student.[140] Over the next several months Guido took lessons until she was thrown from the horse on June 16, 1988.[141] When Guido sued, Koopman moved for a summary judgment on the ground that the signed release precluded Guido from pursuing a claim.[142] Guido, who was an attorney, claimed that when she signed the release it was her understanding that releases from negligence were contrary to public policy.[143] She stated, "I am not an expert on horses but I do not think that there is an inherent risk in being thrown off a horse."[144] She also claimed that Koopman told her that the release was meaningless.[145]

The court noted that releases similar to those Guido signed have been upheld as valid for activities "equally if not more hazardous than horseback riding, dirt bike racing, white water rafting, scuba diving and sky diving."[146] The court further disagreed with Guido's argument that the release was ineffective because she did not think that being thrown off a horse was an inherent risk of horseback riding.[147] The court stated that being thrown off a horse is an obvious risk of that activity readily apparent to anyone about to climb on a horse.[148] Further, Guido had admitted to being bucked off a different horse a few months before the incident.[149] The court also found it a dubious contention that Guido, a lawyer, admittedly uncomfortable with signing a document entitled "release," would take the advice of an equestrian instructor as to its validity.[150] The court found that Guido's reliance on Koopman's statement was not reasonable and found in favor of the defendant.[151]

II. Equine Activity Liability Acts

As the cases cited above indicate, plaintiffs suing for personal injury as a result of horseback riding accidents do not always prevail in law suits for damages. But there were enough cases in which plaintiffs were successful to move operators of equestrian facilities to petition state legisla-

139 Guido v. Koopman, 2 Cal. Rptr. 2d 437, 438 (Cal. Ct. App. 1991).
140 *Id.*
141 *Id.*
142 *Id.*
143 *Id.*
144 *Id.*
145 *Id.* at 439.
146 *Id.* at 440.
147 *Id.* (internal cites omitted).
148 *Id.*
149 *Id.*
150 *Id.*
151 *Id.* at 440-41.

tures for laws to shield them from liability. The laws were prompted by an increase in lawsuits being filed "against everyone and anyone when an incident occurred at an equine event or function."[152]

Connecticut has passed such a law.[153] In hearings held before the Connecticut General Assembly, advocates of liability shielding legislation stated that it was not intended to protect anyone from acts of negligence, but to limit the number of frivolous lawsuits.[154] The testimony before the Connecticut legislature came from such expected sources as the Connecticut Farm Bureau, the Connecticut Veterinary Medical Association, and the Connecticut Horse Council.[155] An industry lobbying group noted that Connecticut ranked second highest in the nation in the density of horses per square mile and that the industry contributes to the economics in Connecticut to the tune of $175 million.[156] Indirect operational expenses for bedding, farrier and veterinary services, equipment, apparel, and transportation equals approximately $108 million.[157] The push for legislation to enhance the business climate for this revenue producing industry was strong.

The consensus of the testimony was that 95% of the time accidents are not the horse's fault but happen because of carelessness or the plain stupidity of the riders.[158] The legislation was sold to the General Assembly as cost-free to the state and as a vehicle for eliminating litigiousness. It was clear from the testimony that the law would not immunize the horsemen from acts of negligence or intentional actions on the part of a riding school.

A further impetus for passage of the law was that large claims are paid by insurance companies to persons injured in accidents involving horses, driving "the cost of liability insurance for stable owners or other sponsors of recreational horse activities to intolerable levels."[159] Coupled with this is the fact that there are very few insurers for these activities. By lowering premiums, limited liability would enable many horse owners to obtain coverage.

Another argument used to promote this legislation was that fear of liability made equine owners reluctant to diversify, expand, or enter into the industry.[160] A less convincing reason advanced in support of this legislation is that other states have passed such laws, and Connecticut should pass one to keep the state competitive with neighbors like Massachu-

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152 *Act Concerning Persons Involved in Equine Activities: Hearings on HB 6357 Before the Judiciary Committee*, Conn. Gen. Assembly (Conn. 1993) (testimony of Rep. John Mordasky, 52nd Dist.).

153 Conn. Gen. Stat. § 52-577 D (1993).

154 *See Hearings on HB 6357, supra* note 152.

155 *Id.*

156 *Id.*

157 *Id.* (testimony of W. A. Cowan, Professor Emeritus of Animal Science at the University of Connecticut).

158 *Id.* (testimony of W.A. Cowan).

159 *Id.* (testimony of Cynthia Adamy-Walstedt, Board of Directors, Connecticut Farm Bureau Association, Inc.).

160 *Id.* (testimony of Cynthia Adamy-Walstedt).

setts.[161] If Connecticut did not pass a law protecting equine interests, horse shows and exhibitions would move to other states that had passed such legislation.[162] Testimony at the Connecticut General Assembly Hearings also disclosed that those who have insurance coverage find that, if sued for a small amount, the insurance companies will not fight the case, but rather will pay the claim, and that horse owners believed this raised the risk of liability for the next stable sued, causing the price of insurance to increase.[163]

Like Connecticut, many other states have passed laws codifying the inherent risk in the horse industry.[164] Some states have passed statutes which very specifically list the risks to be encountered by the rider, while other state statutes are more general. The underlying purpose of these statutes is to protect equine professionals from liability by eliminating the risk of lawsuits that arise out of the inherent dangers in horseback riding, while not exonerating horse owners from liability for negligence.[165]

A representative example of an equine liability act is South Carolina's, which defines the term "equine," in "equine activity," to mean riding, training, providing or assisting in the provision of medical treatment, driving, or being a passenger upon an equine, either mounted or unmounted, or a person assisting a participant or in show management.[166] "Equine activity" includes a long list of activities such as dressage, hunting, jumper horse shows, grand prix jumping, rodeos, driving, pulling, polo, steeplechasing, English or Western performance riding, and equine training or teaching activities.[167] "Equine activity sponsors" include individual groups, clubs, or partnerships which organize, or provide facilities for an equine activity, whether or not the sponsor is operating for profit. Therapeutic riding programs and operators, instructors or promoters of equine facilities are also included in this definition.[168] An "equine professional" is

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161 *Id.* (testimony of Cynthia Adamy-Walstedt).

162 *Id.* (testimony of Cynthia Adamy-Walstedt).

163 *Id.* (testimony of Dick Wolla, past president of the Connecticut Horse Council).

164 As of 1996, the following states have passed Equine Activities Liability Acts (the exact titles vary): ALA. CODE § 6-5-337 (1993); ARK. CODE ANN. § 16-120-201-2-2 (Michie 1993); COLO. REV. STAT. § 13-21-119 (1992); CONN. GEN. STAT. § 52-577 D (1993); GA. CODE ANN. § 4-12-1-4 (1993); IDAHO CODE § 6-1801-1802 (1990); LA. REV. STAT. ANN. § 2795.1 (West 1993); ME. REV. STAT. ANN. tit. 7 §§ 4101-4104 (West 1992); MASS. GEN. LAWS ANN. ch. 128 § 2D (West 1993); MONT. CODE ANN. §§ 27-1-725-728 (1993); 1993 N.M. LAWS 177; N.D. CENT. CODE § 53-10-01-02 (1991); OR. REV. STAT. §§ 30.678, .689, .961, .693, .695 (1991); R.I. GEN. LAWS § 4-21-1-4 (1993); S.C. CODE ANN. § 47-9-710-730 (Law Co-op 1996); S.D. CODIFIED LAW ANN. § 42-11-1-5 (Michie 1993); TENN. CODE ANN. § 44.20-101-105 (1993); UTAH CODE ANN. § 18-276b-101-102 (1993); VA. CODE ANN. § 3.1-796.130-133 (Michie 1993); WASH. REV. CODE ANN. § 4.24.530-504 (West 1993); W. VA. CODE § 20-4-1-6 (1993); WIS. STAT. ANN. § 895.525 (West 1990); WYO. STAT. ANN. § 1-1-122-123 (Michie 1993).

165 Krystyna M. Carmel, *The Equine Activity Liability Acts, A Discussion of Those in Existence and Suggestions for a Model Act*, 9TH ANNUAL NATIONAL CONFERENCE ON EQUINE LAW (May 1994) (transcript available in the University of Kentucky College of Law, Office of Continuing Legal Education).

166 S.C. CODE ANN § 47-9-730.

167 Carmel, *supra* note 165 (citing S.C. CODE ANN. § 47-9-710).

168 *Id.*

typically defined as a person engaged for compensation in instructing a participant, or renting to a participant an equine for the purpose of riding, driving or being a passenger upon the equine, renting equipment or tack to a participant, or examining or administering medical treatment to an equine as a veterinarian.[169] This statute also define "participant" as "a person, amateur or professional, who engages in an equine activity whether or not a fee is paid to participate in an equine activity."[170]

Since the states follow other states' statutes when drafting, many of the laws are very similar. Most laws delineate the situations in which the equine provider will be held liable. Negligent acts, such as providing a faulty horse or faulty tack, or providing an animal without first determining a rider's ability to safely manage the horse usually are not protected.[171] An equine operator can also be held liable for failure to warn of any latent defects in the property and for willful and wanton disregard for safety.[172]

Some statutes require that the equine professional post a sign in a prominent location on or near the area where the equine activity is conducted.[173] Other Equine Activity Liability Acts (EALAs) require standard warning signs with black letters or require inclusion of this statement in a release.[174] Virginia law requires that any waivers "give notice to the participants of the risks inherent to equine activities which are to be listed as they are in the statute."[175]

A few state EALAs relate specifically to the issue of recreational activities. Connecticut's statute reads:

> Each person engaged in recreational equestrian activities shall assume the risk and legal responsibility for any injury to his person or property arising out of hazards inherent in equestrian sports unless the injury was proximately caused by the negligence of the person providing the horse or horses to the individual engaged in recreational equestrian activities or the failure to guard or warn against a dangerous condition, use, structure or activity by the person providing the horse or horses or his agents or employees.[176]

This statute, like those in Wisconsin[177] and Wyoming,[178] specifically states that the participant in a horseback riding event assumes the risk of any injury incurred during the activity. Unlike many other statutes, Connecticut does not list the risks inherent in the activity.

Of all the statutes recently enacted regarding equine liability, West Virginia's is the most comprehensive. Like its White Water Responsibility Act, it is unique in that it imposes a duty on equine professionals as well as

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169 *Id.*

170 *Id.*

171 *See, e.g.*, MASS GEN. LAWS ANN. ch. 128 § 2D (West 1993).

172 Carmel, *supra* note 165 (citing S.C. CODE ANN. § 47-9-710).

173 *See, e.g.*, S.C. CODE ANN. § 47-9-730.

174 *See, e.g.*, IND. CODE ANN. § 34-4-44-10(c) (Michie 1996).

175 *See* VA. CODE ANN. § 3.1-796.131 (Michie 1993).

176 Carmel, *supra* note 165; CONN. GEN. STAT. § 52-577 (1993).

177 Carmel, *supra* note 165; *See* WIS. STAT. ANN. § 895.525 (West 1990).

178 Carmel, *supra* note 165; *See* WYO. STAT. ANN. § 1-1-122-123 (Michie 1993).

participants. In West Virginia, the "horseman," as the equine professional is known, is under an affirmative duty to do such specific things as:

> (1) Make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equestrian activity;
> (2) To determine the ability of the horse to behave safely with the participant and to determine if the participant can manage, care for and control the particular horse;
> (3) To make known to any participant any dangerous trails or characteristics or any physical impairments or conditions related to a particular horse involved in the equestrian activity which the horseman knows or through the exercise of due diligence could have known;
> (4) To make known to any participant any dangerous condition as to land or facilities under the horseman's control which the latter knows or could have known by advising participants in writing or by conspicuously posting warning signs upon the premises;
> (5) To make a reasonable and prudent effort to inspect such equipment or tack to insure that it is safe and in proper working condition;
> (6) To prepare and present to the participant for his/her inspection and signature a statement which clearly and concisely explains the liability limitations, restrictions, and responsibilities set forth in the statute.[179]

The West Virginia law then describes the duties of the participant requiring them to know the limits of their riding abilities and holds them liable for the violation of their duties.[180] The law also includes a provision stating that each participant expressly assumes the risk and legal responsibility for any injury, loss or damage, to person or property resulting from participation in an equestrian activity.[181]

Since these state laws are relatively recent in vintage and are so similar, it is questionable whether they are the antidote to the perceived problems in the industry. One of the dilemmas identified in the testimony before the Connecticut legislature is that of insurance.[182] The equine industry complains that premiums rise due to lawsuits and small claims settled by insurers.[183] The industry argues that insurance premiums would be lower in states that pass these laws.[184] However, it is not clear how the litigation involving these laws will be resolved; thus, if any lowering of premiums result, it will be far in the future.

While the lowering of insurance rates is of practical significance to the horse industry, the passage of Equine Activity Liability Acts pose troubling philosophical issues. If the sole purpose of these laws is to insulate an industry from liability arising out of risks inherent in it, does this not set a dangerous precedent by encouraging other industries to seek refuge in statutes when case decisions do not go their way? Why not pass

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179 W. VA. CODE § 20-4-3 (1993).
180 *Id.* § 20-4-4.
181 *Id.* § 20-4-5.
182 *Hearings on HB 6357, supra* note 152 (testimony of Dick Wolla, past president of the Connecticut Horse Council).
183 *Id* (testimony of Dick Wolla).
184 *Id* (testimony of Dick Wolla).

laws for other activities that are dangerous to participants? Why permit anyone to sue? Why not have legislatures pass laws to limit every business or industry's exposure to liability based on the theory of non-liability?

More troubling is the fact that legislatures are trying to immunize profit-making enterprises. Equine professionals charge for riding lessons, horse renting and other activities, yet they do not want to expose themselves to liability. As a legislator in Connecticut commented at the hearing on its proposed law:

> Regard to people in a society who have no knowledge about horses whatsoever, like me, relying upon the professional, and I will take certain risks—I will do certain things without knowing what the risks are, despite the fact that you may impute to me that knowledge; you would like us to impute that knowledge by law even though we really know most people are city-dwellers like me and are stupid. That's the reality of it. So, we have to balance the fact that a person may be injured and yet we want to take away their rights as opposed to a money-making business which at least might have an obligation to tell people what the risks are.[185]

III. CONCLUSION

The six cases discussed in this paper, all decided in the 1990s, should not alarm the industry. The equine activity provider won three cases and the injured parties won three cases. It is clear that no liability crisis prompted lobbying efforts, because the results in these more recent cases do not differ markedly from cases decided in previous decades.[186]

For years, equine professionals have relied upon exculpatory agreements to exonerate themselves from liability. Yet the cases discussed in this paper indicate, waivers have not been completely successful in shielding stable owners from liability. Thus, the equine industry has sought to recruit state legislators to pass legislation to further insulate them from responsibility to their patrons under the theory of "inherent risk." In some laws, inherent risks of horseback riding include a gamut of so-called dangers from the unpredictability of the horse's misbehavior due to sound, sudden movement, unfamiliar objects, persons or other animals, to the varieties in surface conditions of the area in which the ride takes place. Other laws cover collisions with other horses or objects. Additionally, courts have held that riders who do not control their horses or do not accurately state their riding abilities cannot sue if they are injured.[187]

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185 Carmel, *supra* note 165.

186 *Hearings on HB 6357*, *supra* note 152 (testimony by Richard Tuliscano, Chairman, Judiciary Committee).

187 *See, e.g.*, Heil Valley Ranch, Inc. v. Simkin, 784 P.2d 781 (Colo. 1989) (valid release need not contain the word negligence for ranch to prevail); Smith v. American Indemnity Ins. Co., 598 So.2d 486 (La. Ct. App. 1992) (horse owner held not liable); Pahanish v. Western Trails, Inc., 517 A.2d 1122 (Md. App. 1986) (defendant stable prevailed); *but see* Mirushima v. Sunset Ranch, Inc., 737 P.2d 1158 (Nev. 1978) (plaintiff did not assume risk); Walter v. South Arizona School for Boys, 267 P.2d 1076 (Ariz. 1954) (horse had vicious propensities).

On the other hand, some statutes like the one in Massachusetts, provide that the equine professional may be held liable if he or she provides faulty tack, provides a horse with dangerous propensities, or does not take the time to determine the patron's riding ability.[188] Other statutes require that signs must be posted if there are dangerous conditions on the land and state that the horseman will be liable for intentional injury to the rider or if the horseman acts in reckless disregard of the patron's safety.[189]

It is clear that despite the existence of these statutes, that a riding stable can still be held liable if the equipment is faulty, if the land on which the activity takes place has holes or soft ground, or if a spirited horse is matched with a less than capable rider.[190] Therefore, despite equine industry lobbying efforts, these statutes may not provide the impenetrable shield that advocates had hoped. The statutes may not be any more effective than waivers in protecting the operator from responsibility. Thus, as before, there is no substitute for managing a safe operation that insures that patrons are protected from injury insofar as it is within the power of the operator to do so. Properly training instructors, ascertaining the ability of the riders, assessing the qualities of the horses, determining whether there are dangers on the trails that should be warned against, and replacing worn tack are ways that equine professionals can say "neigh" to liability.[191]

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[188] *See, e.g.*, MASS GEN. LAWS ANN. ch. 128 § 2D (West 1993).

[189] Harry M. Stokes, *A Word About Waivers and Inherent Risk Legislation*, HORSES MONTHLY, Oct. 1995, at 36.

[190] *Id.*

[191] That these statutes do not shield horsemen from liability is illustrated by *Halpern v. Wheeldon*, 890 P.2d 562 (Wyo. 1995), where an inexperienced rider was thrown from a horse after having a problem in mounting. The court held that there were genuine issues of material fact that precluded a summary judgment as to whether stable owners could have assisted the rider in mounting the horse or eliminated risks associated with mounting. *Id.* The statute at issue in the case was the Recreation Safety Act, WYO. STAT. ANN. §§ 1-1-121-123 (Michie 1992).