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Alert | Equine Industry Group

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Notice Requirements Under Florida's Equine Liability Statute: Take This as a Sign

Florida's equine liability statute provides that an equine activity sponsor, an equine professional, or any other person shall not be liable for an injury to, or the death of, a participant resulting from the inherent risks of equine activities. F. S. A. § 773.01-02. Section 773.03 (2) provides five (5) exceptions to the limitation on liability based on certain knowing, negligent, and/or intentional acts or omissions of the equine activity sponsor, professional, or other person.

Section 773.04 of the statute, reproduced below, places an affirmative obligation on equine activity sponsors and professionals to provide participants with notice of the limitation on liability under Florida law, and sets out the precise wording of the notification that is required:

> 773.04. Posting and notification
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> (1) Every equine activity sponsor and equine professional shall:
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> > (a) Post and maintain one or more signs which contain the warning notice specified in subsection (2). These signs shall be placed in a clearly visible location near to where the equine activity begins. The warning notice specified in subsection (2) shall appear on the sign in black letters, with each letter to be a minimum of 1 inch in height, with sufficient color contrast to be clearly distinguishable.

> (b) Give the participant a written document which the participant shall sign with the warning notice specified in subsection (2) clearly printed on it. Said written document may be used in lieu of posting the warning on the site of the equine activity sponsor's or equine professional's facility, and shall be given to any participant in an equine event not on the location of the equine activity sponsor's or equine professional's facility.
>
> (2) The signs and document described in subsection (1) shall contain the following warning notice:
>
> WARNING
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> Under Florida law, an equine activity sponsor or 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.

Despite the mandatory language "shall" in § 773.04, directing equine activity sponsors and professionals to prominently display the signage required by §773.04 (1)(a), and to provide participants with the written document required by §773.04 (1)(b), there is no express language in the statute providing a consequence if these requirements are not complied with. The question then arises: If an equine activity sponsor or professional fails to comply with the provisions of §§773.04 (1)-(2), does the limitation on liability under the statute still apply?

This question was answered as one of "first impression" in *McGraw v. R and R Investments, Ltd.*, 877 So.2d 886 (Fla 1st DCA 2004). Patricia McGraw was an equine trainer employed by R and R Investments, Ltd. (R&R), an equine activity sponsor. McGraw sued R&R for injuries she suffered after being thrown by a horse R&R owned. The trial court granted summary judgment in favor of R&R by reason of the immunity offered equine activity sponsors under Section 773.02. McGraw argued that because R&R had not complied with the sign posting requirements of Section 773.04(a)(1), the statutory immunity did not apply. In ruling for R&R, the trial court concluded that since the protections of the statute were not conditioned on compliance with the sign posting requirements, R&R's failure to comply was of no effect.

McGraw appealed, and the District Court of Appeal reversed the trial court. The appellate court concluded that "the consequence not stated by the legislature for the failure of an equine owner to comply with the posting requirements of section 773.04 is supplied by conjoining the provisions therein with the exceptions enumerated in section 773.03. Thus, the omission of the equine sponsor in not posting the sign required in section 773.04 is one "that a reasonably prudent person would not have done or omitted under the same or similar circumstances'" under § 773.02(d). 877 So.2d at 890. The appellate court reasoned that this construction of the statute is "consistent with the legislative purpose to furnish immunity to a sponsor from liability for injuries resulting from inherent risks of equine activities in circumstances where a participant is fully aware of the sponsor's nonliability for any injury incurred by the participant in such activities." *Id.* at 893. If such a construction were not placed on the statute, reasoned the appellate court, "the interpretation given by the trial court would effectively immunize owners or sponsors from any liability associated with the inherent risks of such activities without any effective enforcement of the legislative demand that they comply with their statutory duty to warn of their nonliability for any injuries ensuing from such activities." *Id.* at 892.

McGraw did not expressly address the question of whether the statute's nonliability provisions would apply where the equine activity sponsor or professional failed to comply with the written document requirement of § 773.04 (1)(b). However, given the mandatory language "shall," the conclusion could be the same as in the case where the signage requirements of § 773.04 (1)(a) were not complied with. The

legislative intent behind the nonliability provisions of Florida's equine liability statute was to "bring back the affirmative defense of *assumption of risk* for equine owners or sponsors unless a *specified responsibility* has been breached." *Id.* at 891 (emphasis in original). As *McGraw* teaches, for the assumption of risk defense to be valid, "it must be clear that the plaintiff understood that she was assuming the particular conduct by the defendants which caused her injury." *Id.* Accordingly, in order to benefit from the nonliability protections of the statute, equine activity sponsors and equine professionals must fully comply with the signage and written document requirements of §§ 773.04 (1)(a)-(b).

Authors

This GT Alert was prepared by:

- Michael A. Nicodema | +1 973.360.7932 | nicodemam@gtlaw.com
- John K. Londot | +1 850.425.8539 | londotj@gtlaw.com