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Advisory | Equine Industry Group

August 2020

New Jersey's Equine Statute: Balancing Inherent Risks and Public Safety

For decades, a large segment of New Jersey's population has engaged in equestrian and other equine-related activities. Further, equine activities have attracted large numbers of non-residents to the state. Recognizing that equine-related activities significantly contribute to New Jersey's economy, the New Jersey Legislature in 1998 passed the Equine Activities Liability Act, N.J.S.A. 5:15–1 to –12. The Act expresses the Legislature's intent to support and protect equine-related activities because of their importance to New Jersey's economy, and the recognition that horse farms are a major land use that preserves open space. To achieve the Legislature's objectives, the Act limits claims that can be brought by participants in equine-related activities against facility operators by defining those risks that the operator cannot effectively eliminate and that the participant should assume, and by precluding recovery for an injury resulting from any of those assumed risks.

Section 5:15-2 of the Equine Act covers "Definitions." In furtherance of the Legislature's goals, Section 5:15-2 sets forth the following non-exhaustive list of "inherent risks of an equine animal activity," and defines them as "dangers which are an integral part of equine animal activity":

a. The propensity of an equine animal to behave in ways that result in injury, harm, or death to nearby persons;

b. The unpredictability of an equine animal's reaction to such phenomena as sounds, sudden movement and unfamiliar objects, persons, or other animals;

c. Certain natural hazards, such as surface or subsurface ground conditions;

d. Collisions with other equine animals or with objects; and

e. The potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including but not limited to failing to maintain control over the equine animal or not acting within the participant's ability.

The relational focus of the Equine Act is the interaction between "operators," "participants," and "spectators." Each of these terms is defined broadly in Section 5:15-2, as follows:

> "Operator" means a person or entity who owns, manages, controls or directs the operation of an area where individuals engage in equine animal activities whether or not compensation is paid. "Operator" shall also include an agency of this State, political subdivisions thereof or instrumentality of said entities, or any individual or entity acting on behalf of an operator for all or part of such activities.
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> "Participant" means any person, whether an amateur or professional, engaging in an equine animal activity, whether or not a fee is paid to engage in the equine animal activity or, if a minor, the natural guardian, or trainer of that person standing in loco parentis, and shall include anyone accompanying the participant, or any person coming onto the property of the provider of equine animal activities or equestrian area whether or not an invitee or person pays consideration.
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> "Spectator" means a person who is present in an equestrian area for the purpose of observing animal equine activities whether or not an invitee.

Section 5:15-3 of the Act provides that participants and spectators assume those inherent risks described in Section 5:15-2, along with "all other inherent conditions." The expansive scope of the assumption of risk is reflected in the following additional language used in Section 5:15-3:

> A participant and spectator are deemed to assume the inherent risks of equine animal activities created by equine animals, … riding rings, … and all other inherent conditions. Each participant is assumed to know the range of his ability and it shall be the duty of each participant to conduct himself within the limits of such ability to maintain control of his equine animal and to refrain from acting in a manner which may cause or contribute to the injury of himself or others, loss or damage to person or property, or death which results from participation in an equine animal activity.

Under Section 5:15-5, the assumed inherent risks set forth in Section 5:15-3 "shall be a complete bar of suit and shall serve as a complete defense to a suit against an operator by a participant for injuries resulting from the assumed risks." Although Section 5:15-5 does not expressly mention "spectators," it may also apply to such individuals because they are bound by the assumption of inherent risk provisions, and the definition of "participant" is broad enough to include spectators (i.e., "anyone accompanying the participant, or any person coming onto the property of the provider of equine animal activities or equestrian area whether or not an invitee or person pays consideration").

The protections afforded to operators of equine facilities through the definitions of inherent risks and assumption of risk in Sections 5:15:2 and 3 are not limitless, however, since they are tempered by a series of exceptions set forth in Section 5:15-9. These exceptions, quoted below, note circumstances in which a facility's operator may be liable for a participant's or spectator's injury:

a. Knowingly providing equipment or tack that is faulty to the extent that it causes or contributes to injury.

b. Failure to make reasonable and prudent efforts to determine the participant's ability to safely manage the particular equine animal, based on the participant's representation of his ability, or the representation of the guardian, or trainer of that person standing in loco parentis, if a minor.

c. A case in which the participant is injured or killed by a known dangerous latent condition on property owned or controlled by the equine animal activity operator and for which warning signs have not been posted.

d. An act or omission on the part of the operator that constitutes negligent disregard for the participant's safety, which act or omission causes the injury, and

e. Intentional injuries to the participant caused by the operator.

Now over 22 years old, there have been only a handful of cases brought in New Jersey Courts under the Act, and only three reported cases. The first reported case is *Stoffels v. Harmony Hill Farm*, 389 N.J. Super. 207 (App. Div. 2006), a negligence action brought against a horse farm and its owners by a plaintiff who was injured after falling from a horse that had suddenly bucked. The Superior Court granted the defendants' motion for summary judgment, holding that the plaintiff had made significant representations to the owners about her riding experience, that the owners had no knowledge of the horse's propensity to lurch until the incident with plaintiff, and that the horse's behavior was an inherent risk of horseback riding. The plaintiff appealed. Concluding from the evidence below that the conduct of the owner who assigned the horse to the plaintiff was not so one-sided that a reasonable jury could not find her negligent, the Appellate Division reversed, and remanded the case for trial on the question of whether she was negligent for having an inexperienced rider on an aggressive horse.

Four years after *Stoffels*, the New Jersey Supreme Court decided *Hubner v. Spring Valley Equestrian Center*, 203 N.J. 184 (2010), a negligence action brought against an equestrian facility operator by a plaintiff who was thrown from a horse when it tripped over a Cavaletti pole in the riding ring and fell. The Appellate Division had reversed the Superior Court's grant of summary judgment to the defendant, and the defendant appealed. Adopting the plaintiff's position, the panel focused its analysis not on the statutory definitions of inherent and assumed risks, but instead on the provisions that created the exceptions. Thus, notwithstanding the assumption of risk for collisions and the conditions of tracks and rings, the panel found that placement of equipment in a position that creates an unnecessary risk of personal injury could constitute negligent disregard for the participant's safety. In reversing the Appellate Division, the Supreme Court held that to prove liability under the statute, "the participant must demonstrate that the injury arose not because of one of the inherent dangers of the sport, but because the facility's operator breached one of the duties it owes to the participant, as defined in the statute's exceptions. A contrary approach, in which the exceptions are read expansively, would threaten to upset the choice that the Legislature has made, because it would potentially permit the exceptions to extinguish the statute's broad protective scope." *Id.* at 206.

The third reported case is the Appellate Division's 2017 decision in *Kirkpatrick v. Hidden View Farm*, 448 N.J. Super. 165 (App. Div. 2017). In *Kirkpatrick*, a mother, as guardian ad litem for her minor child, filed a negligence action against a horse farm and the owner after the child was bitten by a horse while on the farm. The Superior Court granted summary judgment to the defendants, finding that they were immunized from liability because the child came within Section 5:15-2's definition of "participant." The

mother appealed. Characterizing the case as another one of "first impression," the Appellate Division affirmed, holding that the child qualified as a "participant" under the statute.

Analysis of these cases, as well as the unreported New Jersey decisions, reveals that a court's determination of whether one of the statutory exceptions to the assumption of risks provisions will apply is a fact-intensive analysis based on the circumstances of each case. While caselaw under the Equine Act will continue to develop, and there may be more decisions of "first impression," it is important to be mindful of the *Hubner* Court's guidance that to read the statutory exceptions expansively, divorced from the assumed inherent risks, "would threaten to upset the choice that the Legislature has made, because it would potentially permit the exceptions to extinguish the statute's broad protective scope."

Author

This GT Advisory was prepared by:

- Michael A. Nicodema | +1 973.360.7932 | nicodemam@gtlaw.com