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State Equine Liability Statutes Pack Lots of Horsepower: A Survey of Recent Cases

As a large and economically diverse industry, the United States equine industry contributes significantly to the American economy. A 2017 National Economic Impact Study by the American Horse Council indicates that the industry contributes approximately $50 billion in direct economic impact to the U.S. economy, and has a direct employment impact of 988,394 jobs. The study also indicates that the equine industry itself contributes $38 billion in direct wages, salaries, and benefits; and that those direct effects spill over into other sectors of the economy. These direct and indirect effects result in an estimated total contribution of the equine industry to the U.S. economy of $122 billion, and a total employment impact of 1.7 million jobs.

Given the importance of equine-related activities to state economies, and in many cases the recognition that horse farms, show grounds, and related facilities are a major land use which preserves open space, in 1991 states began passing equine liability statutes (ELSs). The first ELSs were passed by Georgia, North Dakota, Oregon, and Virginia in 1991, and the most recent statute was passed by New York in 2017. Currently, only California and Maryland do not have some form of ELS. While the provisions of the various ELSs differ in some respects, all are based on a common underlying objective: to shield persons involved in an equine activity from liability from claims related to a participant's injuries resulting from the inherent risks of that activity, while ensuring the right of an injured participant to recover under certain narrowly defined circumstances. Since 1991, numerous ELS cases have been brought in courts across the country by individuals injured in equine-related activities. We surveyed the cases decided in the last three years, and discuss four of them here to illustrate the broad protective scope of these statutes.

In 2018, the New Hampshire Supreme Court decided *Franciosa v. Hidden Farm Pond, Inc.*, 195 A.3d 816 (N.H. 2018). Franciosa brought a negligence action on behalf of his juvenile daughter against a horseback-riding instructor and the instructor's farm to recover for injuries his daughter sustained in a riding accident when she was 13 years old. The Superior Court entered summary judgment for the defendants, holding that they were immune from liability under New Hampshire's ELS. Franciosa appealed and the Supreme Court affirmed, holding that his daughter's injuries when she fell from the horse and the horse stepped on her resulted from an inherent risk of engaging in equine activity. The statute contained an exception providing that an equine professional could be held liable if he failed to make reasonable and prudent efforts to determine the participant's ability to engage safely in the equine activity. The Court held that even though the daughter was on a "free ride" (one that did not involve a lesson), without the instructor being present, the exception did not apply since the instructor had provided weekly lessons to the daughter for almost two years, and was aware of her substantial riding experience.

In another 2018 decision, the Texas Court of Appeals in *James v. Young*, 2018 WL 1631636 (Waco Div., unreported) affirmed the trial court's order granting summary judgment for the defendants in a case brought under Texas' ELS. While the James and Young families were spending the Fourth-of-July weekend together at the Young's ranch in 2014, six-year-old Bradey James was injured when he fell off one of the Young's horses while on a ride with his family member, Daniel Prado. The horses they were riding, as well as two other horses tied up nearby, started whinnying to each other, and Bradey's and Daniel's horses sped up and began to run. Bradey rocked forward, hit his head on the saddle horn, fell off the back of the horse, hit gravel, and then rolled into the grass. Bradey's father sued the Youngs for negligent handling of animals, claiming that the Youngs failed to exercise reasonable care in allowing six-year-old Bradey to ride solo without first determining his ability to safely mange the horse. In affirming summary judgment, the Court of Appeals noted that Bradey's parents had consented to him riding the horse; his mother knew of Bradey's riding abilities and that he was good enough to ride alone; and that neither parent gave any directive about where or how Bradey should ride the horse other than that he should not run his horse. The Court concluded that Bradey's horse eventually ran due to the nature of horses, and not due to any negligence on the part of the Youngs. The Court therefore held that the Youngs were immune from suit under Texas' ELS, because Bradey's injuries were caused by the inherent risks of engaging in equine activity, and no statutory exception applied.

The Supreme Judicial Court of Maine had occasion to interpret Maine's ELS as a "matter of first impression" in its 2019 decision in *McCandless v. Ramsey*, 211 A.3d 1157 (2019). McCandless had been standing on a track inside an arena where people were riding horses, as opposed to an observation area. A horse ridden by the Ramseys' 10-year-old daughter, after passing directly by McCandless three times, contacted McCandless during a fourth circuit around the track. McCandless fell and injured her wrist, and sued the child through her parents, seeking damages for her injuries under Maine's ELS. The lower court entered summary judgment for the child, finding that she was immune from liability under the statute. On appeal by McCandless, the Supreme Judicial Court affirmed, holding that her injuries fell within the scope of risks "inherent in equine activities" within the meaning of the statute, because the horse's unanticipated resistance to the child's directions was part and parcel of the "propensity of an equine to behave in ways that may result in … injury … to persons on or around the equine." The Court went on to find that the child's inability to steer the horse to avoid McCandless did not fall within the statutory exception for injuries caused by "reckless disregard for the safety of others." Finally, the Court found that since McCandless was standing on the track when she was injured, her injuries did not fall within the statutory exceptions for injuries caused to non-participants "who [were] in a place where a reasonable person would not expect an equine activity to occur," or injuries caused to spectators who were "in a place designated or intended by an activity sponsor as a place for spectators."

Finally, in May 2020, the Indiana Court of Appeals decided *Burdick v. Romano*, 148 N.E. 3d 335 (2020). Burdick brought a personal injury action against Romano alleging negligence, gross negligence, and recklessness in Romano's care and control of a horse, which allegedly kicked Burdick while Romano and Burdick were riding in an arena. After a jury trial, the Circuit Court entered judgment for Romano, and Burdick appealed. Burdick's primary argument on appeal was that the verdict should be reversed because the case was one of simple negligence, and the trial court abused its discretion by refusing to read the jury her instructions on negligence, duty, and reasonable care. Romano disagreed, arguing that since she and Burdick had been engaged in a "sporting activity" when Burdick was injured, Indiana law required Burdick to prove that Romano was reckless, and not merely negligent. In analyzing the issue, the Court of Appeals first looked to Indiana's ELS, and held that the broad statutory definition of "equine activity" (including a non-exhaustive list of sports such as grand prix jumping, polo, western performance riding, and steeplechasing) did not preclude sporting activities. The Court then looked to the undisputed evidence at trial, which showed that Burdick and Romano were riding their horses within an arena specifically and exclusively designed for horse training, and that they both considered their activities to be tricks and training related to the sport of horseback riding. Based on the statutory language and the evidence, the Court upheld the verdict, concluding that the trial court did not abuse its discretion in finding that Burdick and Romano were engaged in a sporting activity.

While there are certainly cases where liability has been found under the exceptions to the broad inherent risk and assumption of risk provisions that pervade the various State ELSs, these cases typically involve acts of gross negligence, or a reckless disregard for a participant or spectator's safety. Nevertheless, each case will be decided on its own unique facts and circumstances, and equine professionals will best serve themselves by becoming knowledgeable about the statutory and decisional law in the jurisdictions where they live and do business.

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