There are a number of liabilities that can arise from equine activities. Forty-six states now have equine activity liability acts, and they all differ. This session will provide an overview of the acts and how they vary as well as exceptions that will allow a claim to proceed. Risk management techniques and insurance coverage will be reviewed, and takeaways for agents, underwriters, and claim adjusters will be given.
Notes

This file is set up for duplexed printing. Therefore, there are pages that are intentionally left blank. If you print this file, we suggest that you set your printer to duplex.
EQUINE ACTIVITY LIABILITY ACTS
Recurring Issues Impacting Insurers and Their Insureds

by Julie I. Fershtman, Attorney at Law
www.fosterswift.com · www.fershtmanlaw.com

Index
Introduction ........................................................................................................................................ 2
Recurring Issues .................................................................................................................................. 2
ISSUE: Does a Particular Animal or Incident Trigger an EALA? ...................................................... 2

   Does the Claim Involve an "Equine" or Applicable Covered Animal? .................................................. 3
   Is the Claimant a "Participant"? ................................................................................................................ 3
   Is the Insured a "Professional," "Sponsor" or "Another Person" to Whom the EALA Applies? .............. 4

ISSUE: Did an “Inherent Risk” Cause the Incident/Injury? ..................................................................... 5

   Cases Addressing “Inherent Risk” ......................................................................................................... 5

ISSUE: Can the Claimant/Plaintiff Proceed Under an EALA Exception? ............................................... 6

   “Faulty Tack or Equipment” Exception ................................................................................................. 6
   “Failure to Make Reasonable and Prudent Efforts” Exception ................................................................. 6
   “Dangerous Latent Condition of the Land” Exception ............................................................................. 6
   “Willful and Wanton” (or “Willful or Wanton”) Exception ................................................................. 7
   “Negligence” Exception ......................................................................................................................... 7

ISSUE: Can Liabilities Under an EALA be Released Away (Before the Activity)? ............................. 7

ISSUE: Did the Defendant Comply With the EALA’s Sign Posting And Contract Language Provisions? 8

   What Happens if the Defendant Doesn't Comply? ............................................................................. 8

   "Warning" Sign and Contract Language Requirements .......................................................................... 8

   Cases Addressing Sign Posting Requirements .................................................................................... 9
   Cases Addressing Contract Language Requirements ............................................................................. 9

Practical Suggestions for Agents and Insurers Involving Equine Activity Liability Acts ..................... 10

About the Author .................................................................................................................................. 10
Introduction

As of May 2016, 47 states – all but California, Maryland, and New York – have passed some form of an Equine Activity Liability Act ("EALA"). These laws often share common characteristics, but all of them differ. The EALAs were generally designed to serve a variety of purposes, including:

- Encourage continued existence of equine-related activities, facilities, and programs;
- Give the equine industry important defenses in litigation;
- Create a sense of predictability for the equine industry, such that persons and entities can better foresee, and, possibly prevent, circumstances giving rise to liability and litigation;
- Provide grounds for defense pre-trial motions for summary judgment, as compared to grounds for comparative negligence or contributory negligence defenses, the latter of which require expensive trial proceedings;
- Potentially provide language for jury instructions on “inherent risks,” which can focus the trier of fact’s attention towards the inherently-dangerous equine activities at issue than merely on the injured plaintiff;
- Encourage people to use exculpatory agreements such as waivers/releases; and
- Educate the public before participation in horse-related activities about inherent risks and immunities that could potentially impact recourse.

Most of the EALAs follow a pattern that prevents an “equine activity sponsor,” “equine professional,” or possibly others from being sued if a “participant” who “engages in an equine activity” suffers injury, death or damage from an “inherent risk.” The laws typically include a list of exceptions that could allow a claim to proceed if the “equine professional,” “equine activity sponsor,” or “another person” does any of the following:

- Provides faulty tack or equipment that somehow causes injury, death, or damage to the equine activity participant.
- Fails to determine the participant’s ability to safely manage the horse based on the participant’s actual abilities or representations of his or her abilities.
- Owns, leases, or has lawful use of land or facilities that have a dangerous latent condition but for which no conspicuous warning signs were posted.
- Some EALA’s have exceptions that may allow liability for “gross negligence,” “willful and wanton misconduct,” “willful or wanton misconduct,” or intentional wrongdoing.
- A small number of the EALAs appear to include an exception related to claims alleging ordinary negligence such as FL, KY, MI, MO, NE, NJ, NM, UT, and VA.

Recurring Issues

Since states began enacting EALAs in the late 1980’s, recurring issues can be found. They are:

**Does a particular incident trigger an EALA?**

**Did an “inherent risk” cause the incident/injury?**

**Can the claimant/plaintiff proceed under an EALA exception?**

**Did defendant comply with an EALA sign posting and contract language provisions?**

**What happens if not?**

**Are the EALAs constitutional?**

**ISSUE:** Does a Particular Animal or Incident Trigger an EALA?

Just because someone was hurt in an equine-related setting does not necessarily mean an EALA applies. When the animal, claimant, and insured are scrutinized, the EALA might not actually apply to them.
Does the Claim Involve an "Equine" or Applicable Covered Animal?

EALAs involve “equines” but sometimes other animals, as well. A few examples:

Kentucky’s EALA is a “farm animal activity liability law” that applies to “cattle, oxen, sheep, swine, goats, horses, ponies, mules, donkeys, hinnies, ratites (ostrich, rhea, emu), and poultry.”
The Texas EALA covers “farm animals” and encompasses equines, bovines, sheep, goats, pigs, hogs, ratites, including ostriches, rhea, emu, chicken or fowl.
Colorado’s EALA applies to equines and llamas.
Iowa’s EALA applies to “bovine, swine, sheep, goat, domesticated deer, llama, poultry, rabbit, horse, pony, mule, jenny, donkey, or hinny.”

Is the Claimant a "Participant"?

Claimants often deny that they were a “participant” to make the EALA inapplicable. Be cautious. Below is a sampling of cases involving the question of whether an EALA applied.

Holding a Horse - WISCONSIN - Hellen v. Hellen, 831 N.W.2d 430 (Wisc. App. 2013). Plaintiff held the lead rope of defendant’s horse while defendant saddled it, but the horse stepped on plaintiff’s foot, causing her to fall. The trial court dismissed her case, finding that she was a “participant” under Wisconsin’s EALA, but the appellate court disagreed and found that issues of fact existed as to whether defendant made reasonable and prudent efforts to determine plaintiff’s ability to manage the horse by holding its lead rope.

Letting a Horse Graze - ARIZONA - Bothell v. Two Point Acres, 965 P.2d 47 (Ariz. App. 1998). Plaintiff was injured while leading defendant’s horse and allowing it to graze. The court held that Arizona’s EALA did not apply because it required participants to “take control” of an equine, but holding a lead rope did not qualify.

Standing Near a Barn and Watching Horses - OHIO - Smith v. Landfair, 984 N.E.2d 1016 (Ohio 2012). The plaintiff stood near a barn door to watch her father exercise a horse when she was kicked in the head by another horse being unloaded from a trailer. The Ohio Supreme Court held that plaintiff qualified as a “participant” under Ohio’s EALA because “spectators” could be participants. By standing where she did, plaintiff placed herself in a location where equine activities took place, thereby subjecting herself to the potential dangers that could arise.

Attending an Equine Auction – IOWA/MICHIGAN - Duban v. Waverly Sales, 760 F.3d 832 (8th Cir. 2014). Plaintiff joined her husband at a horse auction. As she left the restroom, a team of draft horses in the area shied and stepped on her. The auction classified her as a “participant” under Iowa’s EALA (which defined “participant” as “inspecting or assisting in inspecting” a domesticated animal for purchase) but plaintiff said she was a “spectator” with no intention of bidding. The court determined that her status created an issue for the jury. [Compare to Columbus v. Moore, 2006 Mich. App. LEXIS 2400 (Mich. App. 2006)(unpublished), where the plaintiff, who attended a horse auction, was kicked. She argued that she was not a “participant.” The court agreed that Michigan’s EALA exempted “spectators” but she was more than a mere observer because she conversed with horse sellers in an area of the event where horses were frequently led between stalls and to various rings.]

Riding Bareback While Defendant Holds Longe Line - MICHIGAN - Mounts v. Van Beest, 2004 Mich. App. LEXIS 2062 (Mich. App. 2004)(unpublished). This author litigated this case. Plaintiff rode defendant’s draft horse bareback while defendant held the longe line. The horse, not known to be dangerous, suddenly bucked and threw plaintiff. The court held that plaintiff was a “participant” even though he had no reins to control the horse.

Leading a Stallion - TEXAS - Johnson v. Smith, 88 S.W.3d 729 (Tex. App. 2002). Plaintiff was bitten while leading a stallion. He argued that the Texas EALA was inapplicable because he was not a “participant.” The Court
disagreed, recognizing that the Act defined a “participant” as “anyone who engages in an equine activity.” “Engages in an equine activity” included “handling” or “assisting a participant or sponsor with an equine animal.”

Carriage Passengers - Courts disagree on whether a carriage passenger is a “participant” for purposes of applying a state EALA to their claim. The majority view is that passengers are “participants” based on rulings from OH, WI, and CO, but courts in IL and TN have ruled they are not “participants,” mainly because they lack control.

Visitors Walking at a Stable in Aisle or Arena - MICHIGAN - Amburgey v. Sauder, 605 N.W.2d 84 (Mich. App. 1999). Plaintiff watched a friend take a riding lesson at defendant’s stable and later helped the friend groom the horse. When plaintiff walked down a barn aisle, a horse bit him. The court held that he was a “participant” because Michigan’s EALA defined it to include people “visiting, touring, or utilizing an equine facility.”

Is the Insured a "Professional," "Sponsor" or "Another Person" to Whom the EALA Applies?

EALAs apply to an “equine professional,” “equine activity sponsor,” or “another person.” Tennessee’s EALA states:

Except as provided in § 44-20-104, an equine activity sponsor, an equine professional, or any other person, which shall include a corporation or partnership, shall not be liable for an injury to or the death of a participant resulting from the inherent risks of equine activities. Except as provided in § 44-20-104, no participant or participant’s representative shall make any claim against, maintain an action against, or recover from an equine activity sponsor, an equine professional, or any other person for injury, loss, damage, or death of the participant resulting from any of the inherent risks of equine activities.

Emphasis added. This statute defines “equine activity sponsor” and “equine professional” as:

‘Equine activity sponsor’ means an individual, group, club, partnership, or corporation, whether or not the sponsor is operating for profit or nonprofit, which sponsors, organizes, or provides the facilities for an equine activity, including, but not limited to, pony clubs, 4-H clubs, hunt clubs, riding clubs, school and college-sponsored classes, programs and activities, therapeutic riding programs, and operators, instructors, and promoters of equine facilities, including, but not limited to, stables, clubhouses, ponyride strings, fairs, and arenas at which the activity is held;

‘Equine professional’ means a person engaged for compensation:
(A) In instructing a participant or renting to a participant an equine for the purpose of riding, driving, or being a passenger upon the equine; or
(B) In renting equipment or tack to a participant.

Emphasis added. Plaintiffs have argued that a defendant fits within neither category, and an EALA was inapplicable. Here are some examples of cases:

“Professionals” or “Sponsors” – TEXAS/SOUTH DAKOTA - Johnson v. Smith, 88 S.W.3d 729 (Tex. App. 2002). Court rejected plaintiff’s argument that Texas EALA only applied to public stables. A breeding facility qualified. In Nielson v. AT&T Corp., 597 N.W.2d 434 (S.D. 1999), the court held that the EALA was inapplicable to AT&T, which dug a trench across a bridle path, because a utility was not involved in equine activities.

“Another Person” – Where a state EALA benefits “another person,” Courts in these states held that an individual horse owner was “another person” and could benefit from an EALA: MI, CO, GA, LA. In Gibson v. Donahue, 772 N.E.2d 646 (Ohio App. 2002), defendant’s dogs strayed into an area for horseback riding and chased plaintiff’s horse. Plaintiff fell. The defendant claimed Ohio’s EALA protected him from liability, but the Court found the law was inapplicable to dog owners who allow their dogs to chase horses.
ISSUE: Did an “Inherent Risk” Cause the Incident/Injury?

A frequent issue is whether the claimant’s claim is barred because his/her injuries resulted from an “inherent risk.” EALAs typically provide that “equine activity sponsors,” “equine professionals,” or “another person” are not liable if the “participant” sustained injury, death, or damage as a result of an “inherent risk of equine activity.” Laws vary, but common characteristics exist. Georgia’s EALA defines “inherent risk” this way:

‘Inherent risks of equine activities’ or ‘inherent risks of llama activities’ means those dangers or conditions which are an integral part of equine activities or llama activities, as the case may be, including, but not limited to:
(A) The propensity of the animal to behave in ways that may result in injury, harm, or death to persons on or around them;
(B) The unpredictability of the animal's reaction to such things as sounds, sudden movement, and unfamiliar objects, persons, or other animals;
(C) Certain hazards such as surface and subsurface conditions;
(D) Collisions with other animals or objects; and
(E) The potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to maintain control over the animal or not acting within his or her ability.

Several states adopt definitions comparable to (A) through (D), but many do not include (E).

*Cases Addressing “Inherent Risk”*

**OHIO** - *Graham v. Shamrock Stables*, 19 N.E.3d 578 (Ohio App. 2014). A horse’s reaction to a dog, which jumped at the horse’s back legs, was an “inherent risk” under Ohio’s EALA, which barred the claim.

**INDIANA** - *Einhorn v. Johnson*, 996 N.E.2d 823 (Ind. App. 2013). Getting trampled by a loose horse at an event was an “inherent risk of equine activity” under Indiana’s EALA.


**TEXAS** - *Loftin v. Lee*, 341 S.W.3d 352 (Tex. 2011). A horse spooking during a trail ride while riding across muddy and swampy terrain was an “inherent risk” under the Texas EALA, and a horse’s violent reaction to the bite from a fire ant was deemed an “inherent risk” in *Gamble v. Peyton*, 182 S.W.3d 1 (Tex. App. 2005).

**NEW JERSEY** - *Hubner v. Spring Valley Equestrian Center*, 1 A.3d 618 (N.J. 2010). A horse backing and tripping over a cavaletti (wooden rail) in the lesson arena was an “inherent risk” under New Jersey’s EALA.

**MICHIGAN** - *Cole v. Ladbrooke Racing Michigan, Inc.*, 614 N.W.2d 169 (2000). A horse spooking in reaction to a kite in a tree near the exercise track was an “inherent risk” under Michigan’s EALA.

**WYOMING** - *Cooperman v. David*, 23 F. Supp.2d 1315 (D. Wyoming 1998), affirmed, 214 F.3d 1162 (10th Cir. 2000). The risk of a slipping saddle was deemed an “inherent risk” under Wyoming’s EALA. By comparison, issues of fact existed as to whether a slipping saddle was an “inherent risk” under the Texas EALA in *Steeg v. Baskin Family Camps, Inc.*, 124 S.W.3d 633 (Tex. App. 2003).

**MONTANA** - *Mc Dermott v. Carie*, 124 P.3d 168 (Mont. 2005). The court found issues of fact as to whether the incident of a horse’s pulling back was an ‘inherent risk.’
ISSUE: Can the Claimant/Plaintiff Proceed Under an EALA Exception?

Most EALAs include a list of exceptions. Exceptions commonly found in the majority of EALAs include:

“Faulty tack or equipment”
“Providing” the equine and “failing to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity”
Dangerous latent conditions of the land
Willful and wanton misconduct – or willful or wanton misconduct, depending on the law
Intentional misconduct
A negligent act or omission (this exception is found in a small number of states)

“Faulty Tack or Equipment” Exception

GEORGIA - Holcomb v. Long, 765 S.E.2d 687 (Ga. App. 2014). Georgia Court of Appeals stated, in part, that it was “not persuaded that [improper tightening of a saddle] constitutes ‘faulty tack’.”

MASSACHUSETTS - Pinto v. Revere-Saugus Riding Academy, 907 N.E.2d 259 (Mass. App. 2009). Massachusetts appellate court found that a slipped saddle does not necessarily amount to “faulty tack.”

TENNESSEE - Teles v. Big Rock Stables, L.P., 419 F. Supp.2d 1003 (E.D. Tenn. 2006). Court found issues of fact on Tennessee’s “faulty tack or equipment” exception when plaintiff’s stirrups were too long.

COLORADO - Day v. Snowmass Stables, Inc., 810 F. Supp. 289 (D. Colo. 1993). Court found issues of fact on whether a broken neck yoke ring on a harness of a horse pulling a hay ride was “faulty tack or equipment.”

“Failure to Make Reasonable and Prudent Efforts” Exception

This exception, by far, generates the most litigation and claims.

TENNESSEE - Cave v. Woods, 1995 Tenn. App. LEXIS 560; 1995 WL 507760 (Tenn. App. 1995)(unpublished). Plaintiff, a camper in a summer camp’s trail ride was hurt when his horse galloped into a tree. He argued that the case should proceed under the “failure to make reasonable and prudent efforts” exception, but the court found that he failed to prove this. The camp had affidavits of the stable owner and employees, all of whom supported the defendant camp’s position that it complied with the law. Plaintiff could not counter them.

MASSACHUSETTS - Pinto v. Revere-Saugus Riding Academy, Inc., 907 N.E.2d 259 (Mass. App. 2009). Plaintiff, an inexperienced rider, test-rove a retired Thoroughbred race horse at defendant’s stable when the horse allegedly broke into a gallop and the saddle slipped. The appellate court found issues of fact on the “reasonable and prudent efforts” exception since the horse had been seen “prancing” and “tossing his head” before the ride.

TEXAS - Johnson v. Smith, 88 S.W.3d 729 (Tex. App. 2002). The defendant’s alleged failure to warn of a stallion’s potentially dangerous history raised issues of fact under the “reasonable and prudent efforts” exception.

“Dangerous Latent Condition of the Land” Exception

GEORGIA - Mays v. Valley View Ranch, Inc., 730 S.E.2d 592 (Ga. App. 2012). A hitching rail was not a “dangerous latent condition of the land” about which the defendant camp knew or should have known. In Muller v. English, 472 S.E.2d 448 (Ga. App. 1996), a fox hunter’s horse was not a “dangerous latent condition,” either.

MASSACHUSETTS - Duval v. Howe, 2005 Mass. Super. LEXIS 467 (Mass. Super. 2005)(unpublished). The Court noted that even assuming a gate, a man-made structure, could qualify as being “of the land” for purposes of this exception, plaintiff failed to allege that her injuries resulted from such a “dangerous latent condition.”

OHIO - Allison v. Johnson, 2001 Ohio App. LEXIS 2485; 2001 WL 589384 (Ohio App. 2001)(unpublished). Fence rail boards that popped out of a bracket and struck plaintiff in the head after a horse backed into them were not a “dangerous latent condition of the land” under Ohio’s EALA.

“Willful and Wanton” (or “Willful or Wanton”) Exception

TENNESSEE - Jordan v. YMCA of Middle Tennessee, 2010 WL 3853301 (Tenn. App. 2010)(unpublished). The plaintiff argued that defendants showed “willful or wanton disregard” for her safety under Tennessee’s EALA by failing to insist that she wear a helmet before mounting. Still, plaintiff admitted that she suffered no head injury, and she did not allege that the lack of a helmet contributed to her injury. Case dismissed.

KENTUCKY - Davis v. 3 Bar F Rodeo, 2007 WL 3226295 (Ky. App. 2007)(unpublished). Plaintiff’s decedent participated in a rodeo game called “Ring of Fear,” where audience members entered the arena and stood in circles on the ground. A bull was then released into the ring, and the last one standing, without stepping outside the circle, received $50.00. Evidence showed the bull was taunted and agitated before being released. The bull gored the decedent’s abdomen, leading to his death. The appellate court found issues of fact on this exception.

“Negligence” Exception

A small number of EALAs have exceptions for “negligent” acts or omissions. Here are a few cases:

MICHIGAN - Beattie v. Mickalich, 784 N.W.2d 38 (2010), Plaintiff handled one of defendant's horses described as “green broke,” but it allegedly reared and injured her. She asserted the “negligence” exception of Michigan's EALA. Michigan’s Supreme Court agreed that this exception allows litigation for ordinary negligence.

FLORIDA - McNichol v. South Florida Trotting Center, Inc., 44 So. 3d 253 (Fla. App. 2010). Plaintiff drove a Standardbred on a harness track, but the horse spooked from the sight or sound of a vehicle near the track and bolted into a dirt mount, causing plaintiff to be injured. Florida’s EALA had a “negligence exception.” The court held that issues of fact existed as to whether the defendant track was negligent.

MISSOURI - Frank v. Mathews, 136 S.W.3d 196 (Mo. App. 2004). Missouri’s EALA did not prevent plaintiff from suing an instructor for negligent supervision and for negligently telling plaintiff to use a crop.

ISSUE: Can Liabilities Under an EALA be Released Away (Before the Activity)?

A recurring issue is whether a waiver or release of liability can effectively bar claims under an EALA. Courts have differed on this issue, but the majority view is currently that waivers/releases can bar these claims.

Courts in these states have held that releases can bar EALA claims (usually with the exception of claims alleging “gross negligence” or “willful and/or wanton conduct”): UT, GA, CO, OH, MN, MI, FL, MA, and WY.
The minority view is that EALA claims cannot be released. Courts in these states fall into this group: NJ (lower court opinion), NM, TN, CT.

ISSUE: Did the Defendant Comply With the EALA's Sign Posting And Contract Language Provisions? What Happens if the Defendant Doesn't Comply?

"Warning" Sign and Contract Language Requirements

Many EALAs require "equine professionals" (and sometimes “sponsors”) to post "warning" signs and to include certain language within their contracts and exculpatory agreements. For example, Colorado's EALA requires "equine professionals" to use this "warning" language in signs and in their contracts:

**WARNING**

Under Colorado Law, an 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, pursuant to section 13-21-119, Colorado Revised Statutes.

Most EALAs require certain persons or entities, typically “equine professionals” and/or “equine activity sponsors,” to post warning signs using language in the statute. Kentucky’s EALA “warning notice” 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.

Pennsylvania’s EALA, at 4 P.S. § 603 states:

This act shall provide immunity only where signing is conspicuously posted on the premises on a sign at least three feet by two feet, in two or more locations, which states the following:

You assume the risk of equine activities pursuant to Pennsylvania law.

EALA “warning” sign and contract language requirements have generated some confusion:

What if They're Missing? A common misperception is that a defendant’s failure to comply with these requirements will destroy its ability to use a state EALA in its defense. Not necessarily, in this author’s opinion. Only a small number of EALAs expressly condition the entitlement to immunities on compliance with sign and warning language requirements within their laws. Pennsylvania's EALA requires posting of a “warning” sign as a condition to immunities. States with these types of provisions include, but are not necessarily limited to, AL, GA, IN, KY, LA, MS, NC, and SC. Still, the best practice is to post them (where required by law).

Must Everybody Use Contracts? Claimants might argue that the EALAs require all "sponsors" and "professionals" to use contracts and releases – and if the insured had no contract, the EALA is not a defense. Not necessarily, says this author – unless an EALA requires it. A small number of EALAs, such as AZ and VA, appear to require contracts. Still, the best practice is to use them (where allowed by law).

---

1 In McGraw v. R and R Investments, 877 So.2d 886 (Fla. App. 2004), the Court held that the defendant’s failure to post “warning” signs destroyed its ability to use the Florida EALA as a defense. This author believes this was a bad ruling. Florida’s EALA does not expressly hinge entitlement to immunities upon sign posting and contract language.
Cases Addressing Sign Posting Requirements

ALABAMA - Estes v. Stepping Stone Farm, LLC, 2014 Ala. Civ. App. LEXIS 65 (Ala. App. 2014)(unpublished). Court affirmed dismissal of plaintiff’s lawsuit arising from injuries sustained by a four-year-old who took part in a hand-led pony ride at a birthday party. The plaintiff argued that the defendant forfeited immunities by failing to post a “warning” sign or have a parent sign a release, but the court found that the stable did post a “warning” sign, even though plaintiff’s father denied seeing it.


INDIANA - Perry v. Whitley County 4-H Clubs, Inc., 931 N.E.2d 933 (Ind. App. 2010). The plaintiff was injured while competing in a horse show and argued that Indiana’s EALA was inapplicable because the club failed to post a “warning” sign. Yet, evidence was undisputed that the club posted them on all barn entrances. Finding sufficient evidence of “warning” signs, the Court held that plaintiff must prove that the signs were deficient.

FLORIDA - McGraw v. R and R Investments, 877 So.2d 886 (Fla. App. 2004). This author believes that the Court was mistaken in ruling that a stable’s lack of a sign destroyed immunities; Florida’s EALA does not expressly hinge a defendant’s entitlement to immunities on its posting of a “warning” signs.

GEORGIA - Wiederkehr v. Brent, 548 S.E.2d 402 (Ga. App. 2001). Plaintiff, who had represented himself to be an experienced rider, rode defendants’ horse, but the horse reared and fell. The plaintiff argued that the defendants’ entitlement to immunities hinged on posting a “warning” sign. The court dismissed the case and held that Georgia EALA barred the litigation since sign posting requirements applied to “equine professionals” and “equine activity sponsors,” not defendants (who were merely “other persons” and not required to post signs).

MICHIGAN - Amburgey v. Sauder, 605 N.W.2d 84 (Mich. App. 1999). The defendant stable once posted a “warning” sign, but its goat later ate it. The court found that the stable “substantially complied” with the EALA.  

ISSUE: Are EALAs Constitutional?

Yes, based on existing case law. The last-known constitutional challenge was decided twelve years ago, and none of the three challenges has succeeded, mainly because courts believed that the laws allowed plaintiffs sufficient opportunities to redress their claims and did not foreclose all recourse. Constitutional challenges were brought, and failed, in these states: AZ, SD, and LA.

2 Michigan’s EALA does not, by its terms, hinge an “equine professional’s” immunities on its posting of a “warning” sign. Sign posting provisions, under Michigan’s EALA, only apply to “equine professionals.”
PRACTICAL SUGGESTIONS FOR AGENTS AND INSURERS INVOLVING THE EQUINE ACTIVITY LIABILITY ACTS

Agents/Marketing Personnel

☐ Help spread awareness of EALAs so that your proposed insureds comply.
☐ An excellent website that provides and updates these laws is www.animallaw.info.
☐ Consider providing each proposed insured with a copy of his or her state's EALA so that he or she can try to comply. Encourage everyone to read and understand exceptions within the EALA.
☐ Consider providing "warning" signs for insureds as a marketing tool, but only after you are certain that each sign – as to wording, type size, sign size, and color – fully complies with the state law requirements.
☐ Remind proposed insureds to use well-worded contracts and releases (where allowed by law).

Underwriters

☐ An excellent website that provides and updates the EALAs is www.animallaw.info.
☐ Demand a copy of the proposed insured's liability release, and check it for proper "warning" language, at a minimum. Consider comparing a proposed insured's release with this author's list of common characteristics of effective waivers/releases. (List provided with other breakout session materials.)
☐ Request photographs of the proposed insured's posted EALA warning signs. Check their placement and compare the language on the signs the state EALA's requirements.

About the Author

Julie I. Fershtman, a Shareholder with Foster Swift Collins & Smith, PC, in Michigan, has been a lawyer for more than 29 years. She represents insurance companies nationwide on general liability, coverage, farm, agricultural, recreational, and equestrian claims as well as general first-party property, construction, premises liability, and coverage. Insurers have hired her to serve as co-counsel, consulting counsel, EUO counsel, litigation defense counsel, and coverage counsel.

She has successfully tried cases before juries in four states and has been admitted pro hac vice (out of state) counsel in state and federal courts in 17 jurisdictions. She is listed in The Best Lawyers in America, 2013-2016 for Insurance Law and Commercial Litigation and is rated “AV” [highest possible lawyer rating for abilities and ethics] by Martindale-Hubbell. She has been listed in Michigan Super Lawyers® every year since 2008 and was recognized as one of its “Top 25 Women Business Lawyers in Michigan” and “Top 50 Women Lawyers in Michigan” for 2013-2016. Michigan Lawyer's Weekly named her a “2010 Leader in the Law.” She is also a Fellow of the prestigious Litigation Counsel of America.

A past President of the 44,000-member State Bar of Michigan, she received its Michael Franck Award in 2014 for service to the profession. Her speaking engagements span 29 states, primarily on topics of liability, insurance, and risk management. In addition, she has authored over 350 published articles and 3 books on Equine Law issues. The ABA is expected to publish her fourth book in 2017. She is a graduate of Emory College in 1983 and Emory Law School in 1986.