Even with the most careful planning, unexpected situations can arise at livestock and equine events that give rise to claims. In a situation where someone is hurt or killed at an event, the individual or company operating the event will be liable to cover expenses arising from injury or death. This session will discuss the types of events that can be involved and the types of claims that can arise. It will also review the liabilities that can be incurred and how those liabilities can be addressed contractually and with insurance.
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.
# LIVESTOCK EVENT LIABILITIES

2016 IRMI Agribusiness Conference “AgriCon”

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I. INJURED PARTICIPANT CASES

A. Shows/Events

1. Participant - v - Show/Event Management

Davis v. 3 Bar F Rodeo, No. 2006-CA-002212-MR; 2007 WL 3226295 (Ky. App. 11/2/2007)(unpublished). The plaintiff’s decedent participated in a rodeo game called ARing of Fear, which required audience members to enter the ring and stand in circles drawn on the ground. A bull was then released into the ring, and the last person standing, without stepping outside the circle, was awarded a prize of $50.00. Evidence showed that the bull was taunted and aggravated before being released into the arena. The decedent received a blow to the abdomen from the bull and his liver burst, leading to his death. Plaintiff, the decedent’s wife, sued, and the defendants moved for summary judgment based on the release the decedent signed. Plaintiff filed a cross-motion for summary judgment arguing that the defendants’ failure to properly warn of the dangers of the game as required under Kentucky’s Farm Animal Activities Act [Kentucky Farm Animal Activities Liability Act, K.R.S. § 247.401, et seq.] constituted negligence per se and/or strict liability. The trial court denied plaintiff’s motion and granted summary disposition in favor of the defendants. The appellate court reversed the trial court’s grant of summary judgment in defendant’s favor on the release, finding that a genuine issue of material fact existed as to whether defendants committed “gross negligence” that would overcome the release by allegedly provoking the bull. The court also found genuine issues of material fact as to whether the defendants should have offered participants protective gear and should have inquired as to their abilities to take part in the game.

Lessman v. Rhodes, 721 N.E.2d 178 (Ill. App. 1999). Plaintiff was injured in a horse show’s warm-up ring while riding a mare he owned. Another competitor rode on a stallion, which kicked him when he tried to pass. The plaintiff sued the horse show sponsors, the rider of the horse who kicked him, and the owner of the kicking horse. He claimed that the sponsors engaged in “willful and wanton” conduct for (1) not checking into the showing horses’ backgrounds, (2) not monitoring the horses’ behavior, (3) not having stallions shown at separate times and in separate classes from other horses, (4) allowing all horses to be prepared and showed at the same time, and (5) not requiring red ribbons on horses’ tails if they are known to be kickers. The record showed that the sponsor acted no differently from any other horse show sponsor, so its conduct did not qualify as “willful and wanton.” The plaintiff produced no evidence that any other show sponsors conducted background checks, separate or exclude stallions, or require kickers to wear ribbons, which is a good indication that this sponsor did not act recklessly or with conscious disregard to the plaintiff’s safety. Therefore, litigation against the show sponsor was barred by the Illinois Equine Activity Act.

Burke v. McKay, 679 N.W.2d 418 (Neb. 1999). The 18-year-old plaintiff, a participant in a high school rodeo, was injured when the bareback bucking horse he rode flipped over and landed on him. The plaintiff and his father had seen the horse do the same thing at a rodeo the year before and had two hours during which time the plaintiff could have elected not to ride that particular horse. In addition, the plaintiff and his parents signed a waiver before the rodeo. The court held that the plaintiff assumed the risk because he knew and understood the specific danger
that horse presented, having seen the horse do the same thing the year before. Plaintiff voluntarily exposed himself to the danger because he had a sufficient opportunity to decline to ride the horse, and his injuries occurred as a result of his exposure to that danger.

Ashwood v.Clark County, 930 P.2d 740 (Nev. Sup. 1997). In trying to assist a fallen rider on the other side of a fence at a horse show, the plaintiff first tried to go through a locked gate and then injured her knee when she chose to scale the fence. Another gate existed on the premises, which was unlocked, located about 150 feet from the locked gate. The plaintiff sued the county that owned the gate, and the county’s motion for summary judgment was granted. On appeal, the court held that the county owed the plaintiff no duty to keep the gate unlocked. It rejected the plaintiff’s claim of common-law negligence finding no duty to provide the shortest route to any area of the show grounds. Also, despite plaintiff’s argument that a locked gate constituted negligence per se because it allegedly violated a building code, the court rejected this argument because the plaintiff did not belong to the class that the code was meant to protect. The code at issue was not meant to provide the fastest route to different areas of the park; rather, it was meant to allow people to escape through the gate in the event of an emergency. The contractual precautions under the lease agreement did not create a duty to the plaintiff because they were designed to protect visitors who might be unable to escape dangers. In that case, the court reasoned, the plaintiff was in no danger, and a safe means of exiting the area was available.

Muller v. English, 472 S.E.2d 448 (Ga. App. 1996), involved an organized fox hunt. Plaintiff, a highly experienced rider and fox hunter, was injured when she was kicked by a defendant’s horse during a fox hunt. She sued the hunt’s sponsor and the other horse’s rider. Evidence indicated that the horse had kicked twice in the first six months it was purchased and hunted but had not kicked again for years. She claimed that three exceptions applied under the Georgia Equine Activity Liability Act: (1) the defendants "provided an animal and failed to make reasonable and prudent efforts ..."; (2) land having a "dangerous latent condition" for which no conspicuous warning signs were posted; (3) acting in willful and wanton disregard for the plaintiff's safety. The lower court denied a motion for summary judgment but certified the case for immediate appeal. In an extensive analysis, the appellate court reversed the lower court's denial of summary judgment. Partially, the decision reasoned that the defendants had complied with Georgia’s sign requirement by posting a sign on a vehicle windshield near the hunt’s starting point. The court also found that the plaintiff had no standing to assert the law’s "provided an animal and failed to make reasonable and prudent efforts. . .” exception because she was riding her own horse. The court also rejected the plaintiff’s argument that the defendant’s kicking horse was a “dangerous latent condition” of the land. Because the plaintiff presented no evidence that the defendant’s horse exhibited conduct abnormal to horses (the record was full of evidence that “horses do kick”), and because the plaintiff’s years of experience as a fox hunter likely made her aware of the dangers inherent in the sport, the “willful and wanton” claim was rejected, as well.

Rubenstein v. Woodstock Riding Club, Inc., 208 A.D.2d 1160; 617 N.Y.S.2d 603 (N.Y. App. 1994). The plaintiff was injured while competing at a horse show in a class that required her to lead her horse on foot at a trot and then line up in a head-to-tail formation (a “showmanship at halter” or “fitting and showing” class). She could not stop her horse a sufficient distance from the horse standing before her so her horse nudged the hind end of the
horse in front. Thereafter, the horse in front kicked her, fracturing her leg. The court held that the plaintiff assumed the risk of injury by participating in the horse show. In particular, plaintiff knew not to walk behind horses, and she was instructed to stay six to ten feet away from horses= hind ends. It was also recognized that at shows the inherent risk of being injured exists because horses are large, strong, and sometimes-unpredictable animals.

_Hassler v. Simon_, 466 N.W.2d 434 (Minn. App. 1991). This was the “Wild Cow Milking Contest” case. The plaintiff, a participant, was run over by a cow while walking across the arena toward an open gate after the contest ended. The Court found that evidence was sufficient to support a finding that the rodeo promoter and livestock provider were negligent in their conduct of the contest because they used Black Angus cows that would be more excitable.

_Uhler v. Evangeline Riding Club_, 525 So.2d 550 (La. App. 1988). Plaintiff was seriously injured while exercising her horse in a warm-up area during a horse show when she struck a utility guywire on the show grounds. She sued the riding club, the police, and numerous defendants. In particular, the Court found genuine issues of material fact as to the club, that occupied the land for the show, should be liable under theories of negligence or strict liability for failing to remove or relocate the guy wire or for failing to warn participants like the plaintiff of its existence.

_Ruppa v. American States Insurance Co._, 284 N.W.2d 318 (Wisc. 1979). In this case (discussed further below in the insurance section), the plaintiff’s decedent was a competitor in a cutting horse competition but was killed when his horse slipped and fell on him. The Court held that while a Wisconsin law prevented liability against a sponsoring horse club, summary judgment was improper as to the owner or occupier of the land on which the rodeo took place because issues of fact existed as to whether it exercised ordinary care. Evidence showed that the arena might have had an insufficient amount of dirt placed over the firm ground to secure stable footing for the competing horses.

_Rosenberger v. Central Louisiana District Livestock Show, Inc._, 312 So.2d 300 (La. 1975). Plaintiff was injured while taking part in a saddle bronc event at a rodeo. He sat on the bronco for about 8 seconds, but when it became apparent that the horse would attempt to exit a partially open arena gate, it was allegedly too late to jump off or protect himself. He was injured. He sued the entity that operated the property for the rodeo, the agent of the landowner that was responsible for providing staff to organize and supervise the rodeo, and others. The court found that the likelihood of an accident caused by an open gate was “great” and that the defendants should have had procedures in place to prevent riders from competing on the broncos until the gate was closed. The Court also held that the plaintiff did not assume the risk of injury under the circumstances.

2. **Participant - v – Participant**


(Matthews v. Ingham_, 1997 WL 774544 (Tex. App. 1997). The plaintiff and the defendant were fellow competitors at a team roping event in a show. The defendant competed
before the plaintiff and remained on his horse in the arena to register a protest. The plaintiff collided with the defendant as he rode out to pursue a steer. After this case began, another case held that, instead of the “reckless or intentional” standard for holding another participant liable in sporting-event injuries, the standard should be that participants assume the risk of foreseeable injuries. The court found, among other things, that issues existed as to whether the plaintiff roper’s injury was foreseeable. Therefore, summary judgment for the defendant was not appropriate.

Gaurtreau v. Washington, 672 So.2d 262 (La. App. 1996). The plaintiff, while mounted on a horse and waiting to enter a horse show arena, was kicked by a horse ridden by a fellow exhibitor, the defendant. The defendant’s motion for summary judgment claimed that he was immune from liability based on Louisiana’s Equine Activity Liability Act, L. R. S. §9:2795.1, et seq. Motion granted. In upholding the trial court’s dismissal of the case, the appellate court ruled: (1) even though the defendant, a fellow competitor, was a "participant" himself (as defined in the law), he could derive benefit from the law’s immunities since the law expressly applied to "equine professionals," "equine activity sponsors," and "any other person"; (2) the defendant’s conduct did not create any genuine issues for trial as to "willful and wanton disregard" for the plaintiff's safety since evidence revealed that the defendant’s horse was “a real calm, easy going horse” that never kicked anyone before, and never acted wildly; (3) any warning sign posting requirement in the Louisiana Equine Activity Liability Act did not apply to the defendant in this case, as he was not an equine activity "sponsor" or "professional," the latter of whom are subject to sign posting requirements; and (4) the plaintiff’s injuries resulted from “inherent risks” under the Act.


Jones v. Walker, 433 S.E.2d 726 (Ga. App. 1993). The plaintiff, a minor, was severely injured at a horse show while riding a horse during a warm up in a crowded ring when another horse came off a jump and collided with her. She sued the horse’s owner, the owner’s husband, and the horse’s rider (an independent contractor). Summary judgment was granted in favor of the owner’s husband because he merely purchased the horse, gave it to the owner, and paid the bills; he had no control over the horse. Summary judgment was also granted in favor of the horse owner on the plaintiff’s vicarious liability claim because the rider who collided with the plaintiff was an independent contractor, not the owner’s employee. Despite this, however, the plaintiff’s independent negligence claim was allowed to proceed against the owner because plaintiff admittedly knew about the horse’s tendencies and believed the warm up ring was too crowded and dangerous. Not at issue on appeal was the (independent contractor) rider=s negligence.

3. Participant - v – Trainer

Ferguson v. Ulmer, 2003 WL 22512042 (Cal. App. 2003). The plaintiff, 16 years old, was competing in a reining event at a horse show when her horse stumbled during a high speed maneuver and threw her, causing severe head injuries. She sued her former instructor with whom she had not worked in at least a year alleging that he negligently told her not to wear a
safety helmet during reining competition. The trial court granted summary disposition in the defendant’s favor, and the appellate court affirmed. It stated in part:

The undisputed evidence reveals riders in western competition, at the time of Krista's accident, did not customarily wear helmets while competing. Within the world of western competition, riding apparel is designed to simulate cowboy regalia. Hence, the ubiquitous cowboy hat, not a safety helmet, completes the ensemble.

During the western competition at which Krista fell, neither she nor her fellow riders sported protective headgear. Both of Krista's parents agreed it was not common practice for western riders to don protective headgear.

* * *

Given the conflicting advice on apparel provided by the AHSA rules and the widespread practice of eschewing protective headgear during western competition, we cannot find Ulmer owed Krista a duty, as her trainer, to go against the prevailing custom and advise her to wear protective headgear. Krista, citing numerous cases, argues a coach or trainer owes his or her pupil a duty to avoid increasing the risk of injury inherent in a sport. According to Krista, Ulmer’s ‘directive to ride without protective headgear is an affirmative act which increases the risk of injury.’ Emphasis added. While the court dismissed the claims directed against the trainer, finding that he did nothing to increase her risk of harm while she competed, it also commented on the ‘contradictory’ rules of the AHSA [now U.S. Equestrian Federation] in which western competition rules warned competitors they would be penalized for ‘incomplete appointments’ and required them to wear a ‘Western hat.’ Nowhere, at the time, did the western rules of the sport mention the use of protective equestrian headgear.

4. Participant – v- Owner

In Jones v. Walker, 433 S.E.2d 726 (Ga. 1993), a horse/horse collision occurred in a crowded warm-up ring of a show where riders were practicing. Plaintiff, a minor, was injured and her parents sued the owner of the other horse and her husband. The court refused to dismiss the case and found issues of fact as to whether the defendants negligently allowed the horse to participate in the show.

B. Races

1. Participant (Jockey/Driver) – v - Participant (Jockey/Driver)

In litigation between fellow competitors, the standard of Arecklessness@ often applies. Instructive cases not arising from an equine setting — are Craw v. Campo, 136 N.J. 494; 643 A.2d 600 (N.J. 1994), and Hackbart v. Cincinnati Bengals, 601 F.2d 516 (10th Cir. 1979), cert. denied, 444 U.S. 931 (1979). In Craw, a catcher in a softball game was injured when he collided with a player at home plate. The Court held that "the duty of care in establishing liability arising from informal sports activity should be based on a standard that requires, under the
circumstances, conduct that is reckless or intentional." Emphasis added. The Hackbart case, often cited in horse race injury cases, involved a game between the Denver Broncos and the Cincinnati Bengals during which a player intentionally struck and injured another. The injured player sued, and the Court held that his action could proceed under a theory of 'recklessness.'

Ordway v. Superior Court, 243 Cal. Rptr. 536; 198 Cal. App.3d 98 (Cal. App. 1988). A veteran jockey was seriously injured during a horse race at Los Alamitos Race Track when a horse fell and rolled over her. Thereafter, the California Horse Racing Board suspended one of the jockeys in the race for violating a Board rule by 'crossing over without sufficient clearance, causing interference.’ Plaintiff sued the jockeys, trainers, and owners of horses blamed for causing the accident. In the ruling, which did not address a dispositive issue, the plaintiff sought leave to amend the Complaint to go beyond mere negligence and to assert that the defendants engaged in "intentional or reckless" conduct. [NOTE: In a prior California case involving an injured jockey, Santiago v. Clark, 444 F. Supp. 1077 (N.D. W. Va. 1978), discussed further below, the court found that the facts did not sufficiently amount to 'recklessness.' ]

Annonio v. Balzano, 527 N.Y.S.2d 923; 139 A.D.2d 943 (N.Y. 1988). A jockey was injured during a race when the defendant jockey's horse clipped the hooves of the horse in front of it, causing defendant to fall from his horse and onto the path of the plaintiff's horse. The plaintiff's horse fell to the ground, throwing and seriously injuring him. Plaintiff sued the fellow jockey for allegedly 'intentionally' and 'deliberately' throwing himself from his horse in the race. The court dismissed the action and found insufficient evidence of "recklessness," noting that falling from a horse during a race is 'commonplace.'

Turcotte v. Fell, 68 N.Y.2d 432, 437-38; 510 N.Y.S.2d 49; 502 N.E.2d 964 (1986). This case involved jockey Ron Turcotte (who rode the legendary 'Secretariat' to his triple crown win) who was rendered a paraplegic years later after falling from a horse during a race at Belmont Park. Turcotte sued several parties, including a jockey who allegedly caused his horse to fall, as well as the owner of the horse ridden by that jockey. His lawsuit claimed, among other things, that a fellow jockey violated a rule prohibiting “foul riding” in the race (this rule, it would seem, was specifically designed to promote safety in the sport); Turcotte argued that one does not accept or consent to the violation of the rules of a game, even though violations may be foreseeable. Affirming summary judgment for the defendants, however, New York's highest court held that they did not owe Turcotte a duty of care and “[i]f a participant makes an informed estimate of the risks involved in the activity and willingly undertakes them, then there can be no liability if he is injured as a result of those risks.” The court also noted:

In this case the plaintiff testified before trial to facts establishing that horse racing is a dangerous activity. A thoroughbred race horse is the result of years of breeding and that breeding, and all the horses training, are directed to building speed. A thoroughbred horse weighs about one-half ton and, during the course of the race, will reach speeds of 40 miles per hour or more. Jockeys weighing between 100 and 120 pounds, attempt to control these animals, all the while trying to prevail in a race whose very rules require them to exert a maximum effort to win. Plaintiff [Turcotte] testified that every professional jockey had experiences when he was not able to keep a horse running on a straight line, or a horse would veer, or jump up on its hind legs, or go faster or slower
than the jockey indicated. He further acknowledged that horses in a race do not run in
prescribed lanes and it is lawful, under the rules of racing, for horses to move out of their
starting lane to other parts of the track provided that the horse does not interfere with
other horses when doing so. Indeed, during the course of a race, speeding horses lawfully
and properly come within inches of other horses and frequently bump each other. . ..
Such dangers are inherent in the sport.


Santiago v. Clark, 444 F. Supp. 1077 (N.D. W. Va. 1978). Plaintiff, a jockey who was
injured while racing at Shenandoah Downs Race Track in West Virginia, alleged that a fellow
jockey, defendant Clark, improperly cut his horse in front of the plaintiff's horse during a race
and caused a racing accident. His lawsuit predicated the defendant’s negligence on a theory of
“jockey error” or “careless riding” and claimed that the defendant had a history of “careless
riding.” Dismissing on the grounds of assumption of risk, the Court noted:

Thoroughbred horse racing, by its own nature, is a sport posing great peril to its
participants. Up to a dozen horses, each weighing 1000 to 1200 pounds break from a
starting point and attempt to gain a preferred position on the rail as the first turn is
approached. Astride these horses moving at full speed are persons weighing in the
neighborhood of 100 pounds who jockey their mounts for position. In this dash for
position, due to both jockey error and the difficulties in controlling a Thoroughbred
horse, contacts and collisions are commonplace occasionally resulting in spills with
resultant injuries. These dangers are inherent in the sport of Thoroughbred horse racing,
and well known to a jockey who had been riding professionally for seven years. . . .
Accordingly, barring a specific intent to injure or cause an accident on the part of the
other jockey, . . . there can be no recovery for injuries caused as a result of "jockey error"
or ‘careless riding’ in a horse race.

444 F. Supp. at 1079. This case, Santiago v. Clark, discussed above, also included a claim for
“recklessness” in addition to ordinary negligence. However, the Court dismissed all of the
claims based on the doctrine of assumption of risk. It held that, barring a specific intent to
injure, there could be no recovery.

2. Participant - v - Non-Participant Horse Owner

Annonio v. Balzano, 527 N.Y.S.2d 923; 139 A.D.2d 943 (N.Y. 1988). In this case,
discussed above, an injured jockey who sued a fellow jockey and the owner of the horse ridden
by that jockey. As to the horse's owner, the plaintiff alleged he was vicariously liable in hiring
and supervising the jockey. The owner's motion for summary judgment, which the trial court
denied, asserted (1) that he could not be held vicariously liable for an intentional act and (2) that
the plaintiff had no proof of negligence. The appellate court reversed, finding that the facts of
record revealed no evidence from which to conclude negligence or negligent supervision since
the jockey at issue had 12 years' experience with no evidence of incompetence or lack of skill.
3. Participant -v- Non-Participant Trainer

This author litigated the case of Rathka v. Kesler, et al., Genesee County, Michigan, Circuit Court Case No.: 95-42110-NO, on behalf of one of the defendants, the owner/trainer of a Standardbred race horse that broke stride and slowed down near the finish line of a race at Sports Creek Raceway and allegedly caused an accident from which a driver lost his life. The decedent's estate first sued the track and several track officials. After that case settled, the estate sued the owner/trainer and a sulky manufacturer. As to the owner/trainer, the Complaint alleged that he was legally responsible for submitting an "unreasonably dangerous" horse into the race. Evidence was undisputed that this horse had broken stride in past races and even had caused a collision a few weeks before the fatal race.

Although Michigan had abolished assumption of risk decades ago when it adopted comparative negligence, in 1997 this author secured summary judgment in favor of the owner/trainer under a theory of "inherent risks" and using many of the cases already cited above. The Court's dismissal, issued from the bench and not in a written opinion, held that the owner/trainer was not liable in tort because (1) there were no violations of racing rules and the race horse at issue was duly qualified to compete in the race; and (2) the act of "breaking" (breaking stride) is a foreseeable and inherent risk in harness racing and is not a dangerous propensity.

4. Participant - v – Track

Underwood v. Atlantic City Racing Association, 685 A.2d 40 (N.J. App. 1996). A jockey was injured in a race at Atlantic City Race Track when a shadow cast on the track allegedly caused the horse to collapse and fall during a race. His lawsuit claimed that the track had inadequate lighting. The Court found genuine issues of material fact involving installation and maintenance of track lighting system and allowed the case to proceed to trial.

Hardy v. Delta Downs, 599 So.2d 364 (La. App. 1992). A jockey who was seriously injured during a race when her horse lunged out of the starting gate prematurely, sued the track and the gate manufacturer under theories of negligence and strict liability. Evidence at trial proved that the track’s assistant starter's inaction was a "substantial factor" in causing the accident. The jury also determined that the plaintiff’s own negligence did not contribute to her injuries. In reviewing the appeal of a jury verdict for the plaintiff, the Court found sufficient evidence of liability for ordinary negligence.

Sugg v. Ottawa County Agricultural Society, No. 90-OT-005 (Ohio App. 1991). A harness horse race driver was injured when his horse collided with two other horses and drivers during a race. He sued the track alleging that it was extremely dusty and improperly watered. The suit's dismissal was based, in large part, on the plaintiff's acceptance of inherent risks.

Rini v. Oaklawn Jockey Club, 861 F.2d 502 (8th Cir. 1988). Plaintiff, a 23-year veteran jockey, was injured while training a horse during a morning starting practice at a track in Arkansas. After leaving the starting gate, his horse spooked and tried to run the wrong way.
around the track. While attempting to control the horse, the saddle slipped, and he struck the inside rail of the track. His lawsuit claimed that the track was defectively designed.

**Thompson v. Ruidoso-Sunland**, 734 P.2d 267 (N.M. App. 1987). Plaintiff, an apprentice jockey, was racing at Sunland Park when she was bumped by other horses in the race, allegedly causing her to fall over the rail and strike a metal "gooseneck rail" used for an anchor. After a very extensive discussion of assumption of risk, the Court applied secondary assumption of risk. Accordingly, the trial court apportioned negligence between the plaintiff and defendant track, which was later affirmed on appeal.

**Turcotte v. Fell**, 68 N.Y.2d 432; 510 N.Y.S.2d 49; 502 N.E.2d 964 (N.Y. 1986). This case is discussed further above. Plaintiff Turcotte, in addition to his lawsuit against a fellow jockey, also sued the track for allegedly failing to water the “chute” and “over-watering” the main track, which allegedly caused a “cupping” condition. Claims against the track were dismissed on assumption of risk principles (where the Court evaluated negligence on plaintiff Turcotte’s part) after evidence revealed that he had raced on the very same track in three prior races.

**Ashcroft v. Calder Race Course**, 492 So.2d 1310 (Fla. 1986). Plaintiff, a jockey, was rendered a quadriplegic after being run over by another horse at Calder Race Course. The jury rendered a defense verdict applying principles of express assumption of risk. The Florida Supreme Court reversed, however, holding that express assumption of risk waives only risks that are inherent in the sport, but “[r]iding on a track with a negligently placed exit gap is not an inherent risk in the sport of horse racing.” The placement of the exit gap, plaintiff argued, was a substantial contributing factor in his injuries.

**Miller v. Delta Downs**, 428 So. 2d 1229 (La. App. 1983). A jockey was injured during a race at Delta Downs in Louisiana after his horse fell. He asserted that the track was strictly liable under a Louisiana statute. The jury sided for the defendant, and the appellate court affirmed since it found no evidence of a defect or sufficiently culpable conduct.

**Cole v. New York Racing Assoc.**, 266 N.Y.S.2d 267; 24 A.D.2d 993 (1965), **affirmed**, 270 N.Y.S.2d 421; 217 N.E.2d 144 (1965). The decedent, a professional jockey, died during a race when he fell and struck a post near the track’s rail. His estate sued the track’s owner and operator claiming that metal posts near the track rails were improperly grounded in concrete. The Court upheld a jury verdict for the plaintiff and also rejected the assumption of risk defense asserted by the defendants. In doing so, the Court noted that the allegedly-dangerous track footings, and the act of striking them while racing, were not “ordinary and necessary” to the sport.

### III. INJURED SPECTATOR CASES

A. Generally

The treatise Lehr, *Premises Liability 3d ed.*, § 54:1 (2002) stated:

The proprietor of a place of public amusement or entertainment is held to a stricter account for injuries to patrons than the owner of private premises generally. While the
proprietor is not an insurer of the safety of patrons, and does not have the same duty of care as that of a common carrier of passengers for hire, it owes to them ordinary and reasonable care under the circumstances, and must guard them not only against dangers of which it has actual notice but also against those which it should reasonably anticipate, and the failure to carry out this duty is negligence.

Lehr, *Premises Liability*, 3d ed., at 54-1 to 54-4.

**B. Shows/Events**

*Peters v. Wakefield*, 1998 WL 904293 (Neb. App. 11/17/98). The plaintiff was a spectator at a rodeo who was walking to his seat when a competitor, who had been warming up, rode out of the ring and collided with the plaintiff and his friend. The Society staged the rodeo, and a jury could find that the Society’s was negligent in constructing a system where spectators and horses had to cross paths. The Society objected to a jury instruction about premises liability because the plaintiff did not plead or argue that theory. The jury was also instructed on general acts of negligence that were not pled, which is error, because then there was no limit to the Society liability for acts in organizing, sponsoring, or conducting the rodeo. It was also error to use the term “reasonable care” in the instructions without defining it. The trial court’s judgment was reversed and remanded for a new trial.

*Johnson County Sheriff’s Posse v. Endsley*, 926 S.W.2d 284 (Tex. 1996). The plaintiff was in the bleachers at a barrel-racing event when he was struck in the eye, presumably by a rock. He sued the arena’s owner, but it had leased the property to the event’s sponsor. Even though the dirt always remained in the arena, the lessor had a policy that required lessees to prepare the facility, including the dirt, for its events. The court found no evidence that the lessor retained a right to control the premises so the lessee was solely responsible for the dirt’s preparation. The plaintiff argued that the arena should be free of rocks, but a small rock in arena dirt is not an unreasonably dangerous condition, and the arena dirt does not need to be safer than ordinary dirt. The court held that the lessor was not liable for the plaintiff’s injury.

*Mahan v. Hall*, 897 S.W.2d 571 (Ark. 1995). The plaintiff’s son was injured at a rodeo. A bucking horse broke through a gate and struck him when he was in a public area. The plaintiff sued the rodeo’s producer and argued that the gate could not have been secured because the horse went through it. But the state’s model jury instruction said that the fact that an injury occurred is not, by itself, evidence of anyone’s fault or negligence. The plaintiff never offered evidence that the gate was not secured, so the directed verdict for the defendant was appropriate.

*Herman v. Greene County Fair Board*, 535 A.2d 1251 (Pa. Cmmw. 1988). The plaintiff, while attending a horse-pulling contest at a county fair, was struck by the harness of a team of horses that had broken away from their owners/handlers. In defense, the defendant fair board asserted governmental immunity, but the plaintiff argued that the incident fell within the exception that applies if the political subdivision is responsible for the care, custody, or control of animals. The court held that the exception was inapplicable because the county never directly controlled the horses that injured plaintiff – the horses’ owners had control. Therefore, any alleged negligence on part of the county in allowing the horses to compete did not directly cause
plaintiff’s injuries, and the county cannot be held liable for harm the horses allegedly caused when they escaped.

Brophy v. Columbia County Agricultural Society, 116 A.D.2d 873; 498 N.Y.S.2d 193 (N.Y. App. 1986). A horse stabled on grounds owned by a county agricultural society bit and injured the plaintiff, a 3 year-old child. Her family sued. The court held that summary judgment was inappropriate against the defendant agricultural society because its personnel inspected the barn area and the horse at issue had been stabled there for five years. This, the court found, raised genuine issues of material fact as to whether the defendant’s representatives knew of the horse’s alleged dangerous propensities.

Lewis v. Great Southwest Corp., 473 S.W.2d 228 (Tex. App. 1971). A goat within a herd of female and stag domestic goats butted a spectator at an amusement park exhibit, but the court dismissed the case since no evidence supported a presumption that an attendant’s duty was to protect patrons. No strict liability could attach for actions of a goat (a domesticated animal).

McCarron v. Upper Peninsula Hauling Association, 163 N.W.2d 805 (Mich. App. 1968). Plaintiff was a spectator at a popular horse pulling competition when a team ran into the corral where plaintiff stood and caused a log to knock over. He sued the landowners who also organized the event as well as the horse owners. The trial court dismissed all defendants on a motion for directed verdict, and the appellate court affirmed. As to the suit against the landowners/organizers, it held, among other things, that they were not negligent in organizing the horse pulling by failing to have more attendants and police on staff to pull spectators like plaintiff to safety.

Priebe v. Kossuth County Agr. Ass’n, 99 N.W.2d 292 (Iowa 1959). While an 895-pound calf was being led to the exhibition ring, a few boys chasing each other on the grounds spooked it, and it reared up and came down on one of the boy’s legs. The injured boy’s lawsuit claimed that there show area was unrestricted and show grounds failed to control the boys until after the injury. The court refused to dismiss the case, holding that a jury could have found the agricultural association/event organizer negligent by failing to use ropes or temporary fencing to restricted spectators from the show ring gate.

Talizin v. Oak Creek Riding Club, 1 Cal. Rptr. 514 (Cal. App. 1959). The plaintiff attended a horse show when a horse that was competing in a jumping class jumped out of the arena and injured him. A month earlier, the horse did the same thing at another horse show. The court found that the horse had a vicious propensity to jump out of arenas. A propensity to attack human beings is not the only kind of vicious propensity. If a domestic animal has any propensity that is likely to injure a person under the circumstances in which the party controlling the animal places it is legally a vicious propensity. The riding club that hosted the show could have determined whether the horse had this dangerous propensity, and it was negligent in failing to do so and in allowing the horse to compete. The defendants who boarded the horse negligently entered the horse in the show when they knew they had not trained it not to repeat that behavior after it had jumped out of an arena before. The plaintiff did not assume the risk because he did not know or appreciate the danger that the horse would jump out of the gate at him.
Coakley v. Dairy Cattle Congress, 293 N.W. 457 (Iowa 1940). Plaintiff attempted to evade a runaway horse on the grounds of a cattle show, fell and hurt herself. Her case was dismissed on the basis that the horse had no prior propensity to break away and was known to be gentle and well-trained.

C. Races

Konesky v. Wood County Agricultural Society, 844 N.E.2d 408 (Ohio App. 2005). The plaintiff was injured during a harness race at a fair. The fence around the track had an opening, and a horse that had thrown its driver ran through it. The horse trampled the plaintiff even though she was well away from the fence’s opening. Even though a similar accident happened 28 years earlier at the same opening, the opening had no gate. At least one of the several other openings had a gate. To be covered by the primary-assumption-of-risk doctrine, the risk must be so inherent to the activity that it cannot be eliminated. The risk of being trampled by a runaway horse that escaped through a negligently placed gap in the fence is not an inherent risk, so the doctrine does not apply. A reasonable jury could conclude that a duty of ordinary care was breached, so the lower court should not have granted the defendant’s motion for summary judgment.


Clark v. Monroe County Fair Assoc., 212 N.W. 163 (Iowa 1927). In this case, the court noted that the track should erect safety barriers to protect race horses from spectators.

D. Rodeos

Creel v. Washington Parish Fair Assoc., 517 So.2d 467 (La. App. 1987). A spectator at a rodeo was injured when he was struck by a bronco rider who had been thrown from a horse and fell over a retaining fence that separated the riders from the spectators. The court dismissed the injured spectator’s action, holding that the defendant rider could not be liable because (1) he owed no duty to the spectator and (2) for spectators, a foreseeable risk existed that riders could be thrown from the horses. The court also found that the plaintiff, by positioning herself near the retaining wall, assumed the risk of injury.

E. Parades

Snider v. Fort Madison Rodeo Corporation, 2002 WL 570890 (Iowa App. 2002) (unpublished). Plaintiff was a spectator at a parade. Perceiving a “break” in the parade just before an organized group of horses approached, she crossed the street, carrying a lawn chair. Suddenly, a pony ridden by two children, one of the group of advancing equines, bolted and knocked her over. Plaintiff sued the parade sponsor as well as the owner of the pony and raised the following exceptions in Iowa’s Equine Activity Liability Act: (1) reckless conduct; (2) the
lack of a lead rope attached to the pony constituted “faulty or defective equipment”; and (3) the law was inapplicable because of an exclusion for a “spectator who is in place where a reasonable person who is alert to the inherent risks of domesticated animal activities would not expect a domesticated animal activity to occur.” The essence of the liability theory was that defendants negligently allowed children to ride a pony in the parade without a lead rope held by an adult.

Granting the defendants’ motions for summary judgment, the trial court held as to (1) the omission of a lead rope did not qualify as “reckless conduct.” As to (2), the “faulty or defective equipment” exception was meant to apply to some flaw in, or damage to, the materials leading to a breakage or failure to function but could not apply to the setting where a lead rope was not used. Rejecting the plaintiff’s argument in (3), the court held that any reasonable person crossing the street in the face of the oncoming parade of horses had to expect a “domesticated animal activity” there. On appeal, the Iowa Court of Appeals affirmed the dismissal.

F. Auctions

_Columbus v. Moore_, No. 267957; 2006 WL 2089210 (Mich. App. 7/27/2006) (unpublished). The plaintiff was injured at an organized horse sale when a horse that was being led by its owner kicked her after jumping forward and knocking down the owner. She sued the defendant auction company and argued that Michigan’s Equine Activity Liability Act did not apply to her because she classified herself as a “spectator” rather than a “participant” to which the Act’s immunities apply. The trial court granted summary judgment for the defendant and the appellate court affirmed. In doing so, it acknowledged that Michigan’s Act exempted “spectators” but held that the plaintiff was more than a mere observer because she conversed on the grounds with horse sellers in an area where horses were frequently being led between stalls and to various rings.

G. Fairs

_Hynes v. Clay County Fair Association_, 2003 WL 22958042 (Iowa App. 5/17/2003). While attending a fair and walking along a pedestrian area between two barns, the plaintiff was struck by a loose horse that had spooked and bolted from its owner. She sued the fair association that sponsored the event. During the event, the fair posted a sign advising people in the area to exercise care near livestock, not to touch the animals, and that people were responsible for their own safety. The trial court granted the defendant fair’s motion for summary judgment, but the appellate court reversed. It found that the plaintiff was a spectator under the Iowa equine activity liability statute, Iowa Code Anno. § 673.1, _et seq._, and the fair fell within the category of “equine activity sponsors” who could potentially benefit from the law’s immunities. However, issues of fact existed as to whether an exception to the statute’s immunity applied; that exception involved where the activity that causes injury occurs in a place where a reasonable person who is alert to inherent risks of domesticated-animal activities would not expect such an activity to occur. A jury needed to determine whether a reasonable person would expect “domesticated-animal activity” in the pedestrian area where the plaintiff was injured.

held the case could proceed, and refused to dismiss it, even though evidence showed that the cow had no vicious propensities.

IV. INJURY ON GROUNDS OF EVENT (NOT PARTICIPANT OR SPECTATOR)

Estes v. New York State Saddle Horse Association, Inc., 188 A.D.2d 857, 591 N.Y.S.2d 271 (N.Y. App. 1992). The plaintiff was on foot (un-mounted) and allowing her horse to graze near the entrance of a farm that hosted a horse show when a truck and trailer pulled in, followed by a motorcycle. The plaintiff heard a noise and led her horse closer to the road to see what caused it. When the horse saw the motorcycle, it spooked, knocked plaintiff to the ground, reared, and landed on her knee. She sued the motorcyclist, the horse show association, the show sponsor, and the owner of the land that leased it to the sponsor.

The horse show association moved to dismiss the case, arguing that it was wrongly added as a defendant since its only connection to the sponsor was that the sponsor belonged to the association; in support of its motion, the association produced only an attorney affidavit, which the court rejected as insufficient. As to the property lessor’s motion for summary judgment, the court held that was, also, properly denied because it would be mere speculation to conclude from the evidence that the lessor failed to retain control or possession of the land. The court held that the sponsor’s motion for summary judgment was properly denied because the release the plaintiff signed released the sponsor for damages sustained “by reason of such participation” in the show, which did not include events leading up to this accident.

The only motion properly granted, the court held, was that of the motorcyclist. The court held that he had no duty to the plaintiff. He only drove three or four miles per hour and no claim was made that he was excessively noisy, that he was speeding, or that he operated the motorcycle erratically. The motorcyclist had no knowledge of horses, and there were no signs or warnings prohibiting motorcycles from entering the grounds.

Dahlberg v. Mid-America Festivals Corp., 367 N.W.2d 112 (Minn. App. 1985). At a festival that offered pony-drawn cart rides, the plaintiff was injured when a pony broke away and ran off. The speculation at the fair was that the pony was stung by a bee because the prior year the pony cart concession was located near a section of the fairgrounds with a high population of bees; also, the year of the incident the pony concession was near food and garbage areas. Nobody found evidence of a welt on the pony after the incident. The court held that the festival operator was not entitled to summary judgment in its favor, however, and reversed a directed verdict that was in the defendant’s favor. The case should not have been tossed out, the appellate court ruled.
V. DEFENSES

A. Assumption of Risk

The doctrine of assumption of risk, when used as a complete defense for summary judgment or for directed verdict purposes at trial, is based on the theory that the activity involves inherent risks and dangers that the participant was appropriately situated to know and appreciate.

1. Defense Successful

Burke v. McKay, 679 N.W.2d 418 (Neb. 1999), discussed above.

Norkus v. Scolaro, 699 N.Y.S.2d 550 (N.Y. App. 1999). An unbridled horse struck a volunteer show manager while he was visiting a race track, but he was found to have assumed the risks and dangers associated with horses because he knew of dangers generally.


Sugg v. Ottawa County Agricultural Society, No. 90-OT-005 (Ohio App. 1991). The court granted summary judgment in favor of the defendant track in a lawsuit alleging improper maintenance. The Court recognized the plaintiff’s acceptance of risks inherent in the sport and his prior experience racing on the track.


Youst v. Longo, 729 P.2d 728 (Cal. 1987)(California Supreme Court recognized that, in horse racing activities, “[i]mprecision is inherent in the maneuvering of these animals and it is impossible to assure that physical contact among the horses will not occur.”).


2. Defense Unsuccessful (Case Not Dismissed)

The assumption of risk defense, in states that allow it to be asserted, could fail if the court finds issues that the risk did not inhere in the sport. Here are a few examples:

Ashcroft v. Calder Race Course, 492 So. 2d 1309 (Fla. 1986). The Court noted that “[r]iding on a track with a negligently placed exit gap is not an inherent risk in the sport of horse racing.”
Cole v. New York Racing Assoc., 266 N.Y.S.2d 267; 24 A.D.2d 993 (N.Y. App. 1965), affirmed, 270 N.Y.S.2d 421; 217 N.E.2d 144 (N.Y. 1965). The Court upheld a jury verdict for the plaintiff and rejected the assumption of risk defense because it found that the track footings, and the act of striking them, were not "ordinary and necessary risks" in the sport of horse racing.

Martino v. Park Jefferson Racing Association, 315 N.W.2d 309 (S.D. 1982). This case involved a jockey who was injured in a race at Park Jefferson after his horse ran through a removable railing. The trial court held for the plaintiff and rejected the defendant's motion for directed verdict that was brought on grounds of assumption of risk. The South Dakota Supreme Court affirmed, holding that the “voluntariness” of any assumption of risk by plaintiff was properly submitted to a jury. It noted that a state racing commission regulation required jockeys to fulfill all racing engagements (regardless of the track conditions).

In Thompson v. Ruidoso-Sunland, Inc., 734 P.2d 267 (N.M. App. 1987), assumption of risk was successfully invoked but did not defeat the case. The Court found that the dangers of an unguarded gooseneck rail at Sunland Park were not inherent in the sport of horse racing. Accordingly, the court applied secondary assumption of risk and, after comparing the negligence on the plaintiff's part to that asserted against the defendant, affirmed judgment for the plaintiff.

Rosenberger v. Central Louisiana District Livestock Show, Inc., 312 So.2d 300 (La. 1975). This case, involving an injured rodeo participant, is discussed further above.

B.  Release

1. Release Successful/Case Dismissed

Eriksson v. Nunnink, 233 Cal. App. 4th 708 (Cal. App. 2015) involved a fatal injury sustained at three-day event competition, but the release that led to dismissal of the case was signed privately between the competitor and the trainer. In this case, a 17 year-old experienced equestrian was killed during the cross-country segment of the show when her horse fell over on her while attempting a jump. When the jump was taken, the decedent/rider had already been excused due to jump refusals but attempted the jump, anyhow. The parents sued their decedent/daughter’s “coach” for wrongful death and intentional infliction of emotional distress. Before the incident, both the decedent and her mother signed the instructor's liability release, which was entitled “RELEASE OF LIABILITY.” Although law existed in California that releases signed by minors could later be disaffirmed, law also existed in that state that when a parent signed on behalf of a minor, the document could not be disaffirmed. The California Court of Appeals affirmed dismissal of the lawsuit in its entirety, holding that the decedent had released her claims against the instructor, and the parents' derivative claims were also released away "by the terms of the release." The court did note that the parent's signature line only identified the decedent's mother as "parent," and not necessarily a signing party, but the document was nevertheless enforceable as a defense to the parents' wrongful death and bystander liability claims. Ultimately, the Court affirmed dismissal of the lawsuit on the basis of the liability release and because the Court found insufficient proof of gross negligence.
Tindall v. Ellenberg, 2001 WL 254256 (N.Y. App. 3/13/2001). Plaintiff was kicked by a horse while riding in a fox hunt. The kicking horse wore a red ribbon on its tail (signaling to other riders that it had a known tendency to kick). An appellate court affirmed dismissal of the case, in part, because the plaintiff had signed a “release and waiver of liability” before the event. The document acknowledged that cross-country horseback riding and fox hunting are “inherently dangerous and unpredictable activities” and that the plaintiff agreed to assume all risk of injury.

Cole v. Ladbroke Racing Michigan, Inc., 614 N.W.2d 169 (Mich. App. 2000). Plaintiff, a licensed exercise rider with 20 years of experience riding Thoroughbred race horses, was injured while exercise riding at the track. During the ride, the horse spooked from the presence of a kite or piece of plastic on a nearby tree. Dismissal of the action was affirmed based on an “Acknowledgment and Assumption of Risk” form he had signed.

2. Release Not Enforced as to Minor But Enforced as to Signing Parent

Rogers v. Donelson-Hermitage Chamber of Commerce, 807 S.W.2d 242 (Tenn. App. 1990). The plaintiffs’ decedent was a teenage girl who was killed while participating in a horse race at a civic event. As a condition to the girl’s participation, her parents signed a release. The night before, the girl allegedly phoned her mother and read the language in the release. Thereafter, her mother signed a note:

Brandy Rogers has my permission to race today. Under no circumstances will anyone or anything be liable in case of an accident.

Brandy, the decedent daughter, later died from injuries she sustained during the race when she galloped across the finish line, and her family sued. The trial court invalidated this “release,” and the Court of Appeals affirmed. The court held that, in part because the case proceeded under the wrongful death statute (where the decedent’s estate derivatively asserts the rights of the deceased), “Mrs. Rogers could not execute a valid release as to the rights of her daughter to sue for injuries suffered from the alleged negligent acts of the defendants.” However, the court recognized that the release could bar the mother’s cause of action brought in her own right.

Carr v. Korkow Rodeos, 788 F.2d 485 (8th Cir. 1986). During a 4-H rodeo competition, the plaintiff, a 16 year-old, became a paraplegic after being injured in a bareback bronc ride when the horse provided by the rodeo landed on top of him. He sued and won a jury verdict of $1,250,000. A waiver of liability was apparently executed, but the court ruled that the document was powerless against a claim brought by the minor child. On the other hand, the document could bar the parents’ individual claims.

3. Release Failed


Burke v. McKay, 679 N.W.2d 418 (Neb. 1999), discussed further above.
C. Equine Activity Liability Acts

As of April 2016, 47 states (all but California, Maryland, and New York) have passed some form of an equine activity liability act. These laws are designed to limit or control certain liabilities in equine-related activities. A significant number of them apply to participants in equine-related events and sometimes to spectators. Some of them have “race horse meet” exclusions.


VI. PREMISES LIABILITY

A. Injured Participants

*Verro v. New York Racing Association, Inc.*, 142 A.D.2d 396; 536 N.Y.S.2d 49 (N.Y. App. 1989). The plaintiff, a jockey who was injured while training a race horse at Oklahoma Training Track, collided with a pole after his horse broke through an inside rail. His lawsuit was dismissed on summary judgment and the appellate court affirmed, stating that “‘the assumption of risk doctrine’ applies to any facet of the activity inherent in it and to any open and obvious condition of the place where it is carried on” (emphasis in original).
B. Injured Spectators

Jewell v. Equestrian Events, 2003 WL 22928470 (Ky. App. 12/12/2003)(unpublished). While in an enclosed tent at the Kentucky Horse Park, the plaintiff slipped and fell on a puddle of water on a buffet platform. The buffet was not open yet, but the catering company’s employee advised her to get coffee from the other end of the tent, and she was crossing the platform to do so when she fell. The association that sanctioned the event had no liability because it had nothing to do with the event’s operation. The tent provider had no liability because nothing indicates that the tent was defective. The show manager and the catering company had a duty to business invitees like the plaintiff. The show manager possessed the whole property and had a duty to inspect for latent defects; it could not escape liability even though it had a contract with the catering company. The catering company might be liable because it was responsible for running events in the tent, and its employees may have tracked water in. The puddle on the platform may not have been open and obvious because the platform was inside, people were meant to walk on it, and the water may not have been visible because it is clear and the lights were not in the buffet’s vicinity, so there is an issue of fact.

Perry v. Hazel Park Harness Raceway, 332 N.W.2d 601 (1983)(racetrack accused of utilizing a paint mixture that allegedly rendered the floor more slippery when wet.

Christou v. Arlington Park & Washington Park Race Tracks Corp., 432 N.E.2d 920 (Ill. App. 1982). Plaintiff, a patron at the track’s clubhouse, was pushed into a plate glass door and was injured. The court held that the track should have been allowed to assert, in its defense, that it had no legal duty to install safety glass for the protection of its guests.

McMillan v. Mountain Laurel Racing, Inc., 367 A.2d 1106 (Pa. Super. 1976). The court held that the defendant race facility had a duty to clean up debris left on the ground by spectators.

Tom v. Days of ’47, Inc., 401 P.2d 946 (Utah 1965), rodeo spectator fell from the bleachers and his head struck concrete below after a belligerent, trained bull charged the fence and caused a stampede of frightened spectators. The court affirmed the entry of judgment for the spectator/plaintiff because, among other things, the top row of the bleachers had no back support and is was considered somewhat foreseeable that a vicious animal might come in contact with the fence.

Tomlin v. Miller, 81 N.E.2d 760 (Ill. App. 1948). A rodeo spectator was struck on the head by a pole dislodged from a corral fence when a bucking bronco collided with it. The Court found that sufficient evidence showed the defendant was liable because it knew of the dangerous propensities of bucking broncos at the rodeo and should have better protected spectators.
VII. INSURANCE COVERAGE ISSUES

A. Participant Exclusions

1. Sample Policy Language

Commercial General Liability policies issued to associations and property owners holding sporting and recreational events often contain “Participant” exclusions. An example:

EXCLUSION - Athletic or Sports Participants

* * * *

With respect to any operations shown in the Schedule, this insurance does not apply to ‘bodily injury’ to any person while practicing for or participating in any sports or athletic contest or exhibition that you sponsor.

Emphasis added.

4. Claimant Excluded as a “Participant”

* Ruppa v. American States Insurance Company, 284 N.W.2d 318 (Wisc. 1979). In this coverage case, the plaintiff’s decedent was a competitor in a cutting horse competition who was killed when his horse slipped and fell on him. The estate sued the event provider but its General Liability policy contained an exclusion for bodily injury or death of any person “while practicing for or participating in any contest or exhibition.” The Wisconsin Supreme Court found that coverage was excluded because the decedent qualified as a “participant” when he competed in the cutting event at the time of his death.

* With a similar “participant” exclusion in a fair’s General Liability policy, the court in Saline County Agricultural Association v. Great American Insurance Company, 494 N.E.2d 1278 (Ill. App. 1986), held that no coverage existed for claims brought by a jockey who was injured during a race. The jockey qualified as a “participant” in a covered event.

* In Madison County Sheriff’s Posse v. Horsemen’s United Association, 434 So.2d 1387 (Ala. 1983), the plaintiff was a rodeo participant who was responding to a gate call when he collided with a farm implement in a poorly lit area of the grounds. Even though he attempted to pin blame on the farm implement, the Court found that the plaintiff’s “participant” status prevented coverage for his claims.

3. Claimant Not Excluded as a “Participant”

* In Tropical Park v. United States Fidelity and Guaranty Company, 357 So. 2d 253 (Fla. App. 1978), the Court held that an exercise rider at a race track who became injured while riding a race horse in the early morning hours was not a “participant” because he was not deemed to
have been “practicing for or participating in” any contest or exhibition. The race horse in that
case was merely in training and was not even scheduled to compete in any upcoming races.

B. Insured Location

_Totten v. Underwriters at Lloyd’s London_, 176 Cal. App.2d 440; 1 Cal. Rptr. 520 (Cal.
App. 1959). The court affirmed denial of coverage on the basis that the policy did not provide
coverage for an accident that occurred at a horse show taking place in another city. The policy at
issue only covered accidents arising out of the ownership, maintenance, or use of the premises,
or necessary or incidental operations.

C. Designated Operations

_Sam v. Delta Downs_, 564 So.2d 829 (La. App. 1990). A jockey’s estate sued Delta
Downs alleging, among other things, improper supervision and selection of medical employees,
negligent on-site emergency treatment, and inadequate on-site medical facilities. Such claims
were considered, for coverage purposes, to be independent of insured horse racing activities.

VIII. PROPERTY DAMAGE CLAIMS

11/18/2009). Plaintiff race horse owner sued a track for damages to his horse allegedly caused
by the track’s starting gate crew that opened the start gate prematurely, causing the horse to
gallop out before the jockey was ready. He fell and the riderless horse tried to jump over an
outer rail, causing the horse to injure its knee. The court, dismissing the action, recognized that
any negligence attributable to the defendant’s gate crew were “neither unique nor created a
dangerous condition over and above the usual dangers that were inherent in the sport of horse
racing.”

_Alaimo v. Racetrack at Evangeline Downs_, 2005 WL 233806 (La. App. 2/5/05). Plaintiffs owned and bred a racehorse that had to be euthanized after running into a gate that was
left open, but should have been closed, during exercise at the track. Because the outrider,
charged with keeping the gate closed, admitted that horses might try to run through an opening if
the gate were open, the court found the risk was foreseeable so the track had a duty to keep the
gate closed. The rider, who was the only eyewitness, testified that the gate was open, but the
outrider on duty testified that it had been closed minutes before. After a bench trial awarding
damages, the defendant argued that the damages should be reduced because the rider could not
control the horse.
About the Author

Julie I. Fershtman, a Shareholder with Foster Swift Collins & Smith, PC, in Michigan, has been a lawyer for 30 years. With a law practice that is uniquely national in scope, she represents insurance companies 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. Her law practice also includes commercial litigation and equine law.

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