



EMO Newsletter July 2015

### **Judge's Ruling Reaffirms the Importance of Liability Releases**

Earlier this year, a California judge issued a summary judgment in favor of a horse trainer in a lawsuit brought against her by a deceased rider's parents for wrongful death and infliction of emotional distress. During the Galway Downs International Three-Day Event, the rider was killed after a rotational fall on the cross-country course.

In the findings, the Court of Appeal held that:

- the mother's signature on the release of liability between coach and rider precluded the mother from disaffirming the release
- the mother was not contractually bound by any promises in the release
- the release unambiguously released coach from liability to rider
- the release effectively extinguished the coach's duty of ordinary care to the rider such that the coach could rely on the release as a defense to wrongful death claims
- the coach did not owe a duty of care to the rider's parents for purposes of emotional distress claim
- the parents had the burden of establishing that the coach was grossly negligent once the coach proved the validity of the release

The judge's decision included: "In its most basic sense, 'assumption of risk' means that the plaintiff, in advance, has given his express consent to relieve the defendant of an obligation of conduct toward him, and to take his chances of injury from a known risk arising from what the defendant is to do or leave undone; the result is

that the defendant is relieved of legal duty to the plaintiff, and being under no duty, he cannot be charged with negligence.”

The decision reaffirms the need for a Liability Waiver/Release Form, which is typically used to protect a business or person from liability for dangerous activities when the participant signs the release before participating.

“It really does underline the importance of a good release, and the importance of having an attorney familiar with equine law draft the release,” said Frank B. Aubrey III, of Berkley Program Specialists. “That \$250 to \$500, depending on where you are in the country, you spend could make a huge difference if something happens and a suit is brought.”

In this particular case, it was noted, “Notwithstanding ‘traditional skepticism’ concerning releases of liability for future negligence, courts will generally enforce such a release unless it affects the public interest.”

Therefore, if you train, coach or have care, custody and control of horses in your business, it’s in your best interest to obtain signed releases/waivers from all participants.

When drafting a liability release/waiver, it should clearly list the inherent risks involved in the activity. Inherent risks of equine activities mean those dangers or conditions that are an integral part of equine activities. Some of these would be as follows:

- (a) The propensity of equines to behave in ways that may result in injury, harm, or death to persons on or around them.
- (b) The unpredictability of an equine'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 equines or objects.
- (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.

Liability releases/waivers should also be clear and concise. The person signing the waiver should know what risks he/she is waiving. A waiver that just says, “horseback riding is dangerous” does not state what inherent risks are being waived.

Be sure to have an attorney that specializes in equine law review and/or approve the release/waiver that you are using. The attorney can help to insure that you have a solid release/waiver for the state or jurisdiction in which you reside and help you fine-tune the release to best cover your specific needs.

Although releases/waivers are important to procure, they **do not** pay for the cost of your legal defense or the cost of a legal judgment if you lose a lawsuit, and that's where liability insurance becomes your best defense.

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