

MEMORANDUM

TO: Board of Directors of Interscholastic Equestrian Associations, Inc.

FROM: Timothy J. Boone Co., LPA

DATE: June 16, 2008

RE: States Equestrian Liability Statutes and Case Law
IEA Release or Waiver of Liability from Negligence

Because IEA has grown geometrically since its inception, and it is hoped that there is continued growth into new states, the following memorandum was prepared to inform and instruct the Board and its members on the current legal status of equine activity liability statutes and laws, and on the liability release waiver forms related to such activity. The following analysis will focus only on the states of California, Colorado, Connecticut, Florida, Georgia, Indiana, Kentucky, Maine, Massachusetts, Maryland, Michigan, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont and Virginia, i.e., states in which IEA currently has, or anticipates having, coaches, members and teams.¹ As members join or contemplate joining in other states, this memorandum must be updated.

While the goal of these equestrian statutes and laws are clear, to limit the legal liability for equine sponsors in the event of injury due to an inherent risk of riding or handling horses, each state is free to shape the law the way it sees fit. For this reason, this memorandum will review the applicable statutes and laws of each state.

Of the states named above, all but California, Maryland, New York, Pennsylvania and Utah have enacted statutes that expressly limit liability for equine activities. Of these states not using a specific equine liability statute, the laws relating to “assumption of the risk”, a common-law doctrine that basically means that people engaging in a dangerous activity understand and assume the inherent risks that come with that activity, will be of the most interest in attempting to limit liability.

Closely related to the subject of equine activity liability statutes are Waiver of liability release forms or waivers in which the participant and his/her parent/legal guardian signs the form for the purpose of limiting the liability of the equine activity sponsor. This becomes important because many of the states who have enacted these liability limiting statutes require certain language to be included in the written waiver before they

¹ Remember that the law is constantly being changed and amended by the courts and legislators. For this reason, this research of case law and statutes for each state should be reviewed regularly to ensure that no pertinent changes have occurred. Naturally, when IEA branches into any states not addressed in this memorandum, additional research should be conducted immediately on those particular states to ensure any additional requirements are met. Please inform us of any new states immediately.

become effective. Because most state statutes do not protect against negligence (carelessness) of the equine activity sponsor as an inherent risk of the activity, additional release forms attempting to limit liability for negligence must be used.

Negligence is a legal term that indicates a duty is owed to a participant that is not carried out by the sponsor. Breach of that “duty” is usually defined as a failure to act, or refrain from acting, when an ordinary person under similar circumstances would act, or refrain from acting. The extent to which each state enforces limitations on liability for negligence varies. Some states refuse to enforce contract terms that prevent injured parties from bringing claims for negligence. Other states enforce such terms so long as the language of the contract is clear and unambiguous. This memorandum includes a state-by-state review of the law regarding the enforceability of contract language that limits liability for negligence.

This memorandum is designed to educate and inform you and IEA members on the current legal position each state listed takes in relation to horse related activities and the liabilities that can stem from such activities. *However, it must be cautioned that no state statute or liability waiver form can guarantee that IEA, its members or event coordinators (EHC) will never be subject to litigation or liability in all instances.*

This analysis will begin with some general provisions found in the typical equine liability statute. Next, each state’s statute, or existing case law addressing recreational activity sponsor liability, will be analyzed state by state. Finally, the memorandum will address waiver of liability forms and their probable effect.

General Requirements of the Statutes:

- 1) Posting Requirement - This simply requires that if a written notice or warning is called for in the statute, it must be posted in a conspicuous place where participants are likely to see and read it.
- 2) Notice Requirement - If called for by the particular state statute, it requires that each riding sponsor give actual written notice as to the hazards inherent in riding to each participant in a contract type document before the participant begins the activity. It is recommended that this notice be given periodically (not less than every 12 months) so that an injured participant or his/her parents cannot claim that they were unaware of the inherent risks of horseback riding.

States with Equine Liability Statute Requirements:

Connecticut: Under the current Connecticut statute, C.G.S.A. § 52-557p, there is no posting or notice requirement. The language of the Connecticut statute provides that each person engaged in equestrian activities assumes the risk and legal responsibility for any injury arising out of the hazards inherent in equestrian sports. It goes further and specifically exempts any negligence (carelessness) on the part of the sponsor for failure to guard or warn against a dangerous condition, use, structure, or activity by the person providing the horse or horses or his agents and employees from limited liability

coverage under the statute. However, this does not mean that any negligent act of the horse provider in Connecticut must be subject to legal liability. In a recent Connecticut Superior Court Decision,² an indemnification clause signed by the father of the injured rider that shifted the liability to the father, even for negligent behavior of the horse provider, was upheld. As to gross negligence (very extreme negligence) or intentional behavior, it is virtually impossible to limit liability for these behaviors.

Colorado: The current Colorado Statute, C.R.S.A. § 13-29-119, requires certain language to be posted on a conspicuous sign on the property and in a written notice or contracts to be signed by the rider or his or her parent. As for the warning sign, the sign shall be placed in a clearly visible location on or near stables, corals, or arenas where equine activities are conducted. The warning shall appear on the sign in black letters, with each letter to be a minimum of one inch in height. This warning, which is also mandatory on all contracts entered into by the equine professional for services, instructions, or the rental of equipment or tack or horse to a participant shall contain the following language: **Under Colorado Law, an equine professional is not liable for 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.**

Under the statute, the inherent risks of an equine activity include but are not limited to the propensity to behave in ways that may result in injury, harm, or death to persons on or around them, the unpredictability of the animal's reaction to sound, sudden movement, and unfamiliar objects or persons, certain hazards such as surface and subsurface conditions, collisions with other animals or objects, and 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. (These same actions would likely be considered assumed risks for any state not providing for an explicit statute) Keep in mind that the final risk dealing with negligence of a participant only deals with negligence of a rider, not a sponsor or instructor.

While the Colorado Statute does not include any language about negligence, a recent Colorado Supreme Court ruling³ states that equine sponsor's liability for negligence can be relieved by written agreement provided the agreement is written in plain English and is not too long or complicated. Also, the case stresses that the sponsor must take measures to ensure that the rider understands the nature of the agreement. Therefore, care should be taken to explain all inherent risks in detail and to fully explain the nature of what rights the participants and their parents are giving up in signing the waiver. Colorado, similar to most other states, disfavors any exculpatory agreement that attempts to limit liability for willful or wanton negligence (negligence that is intentional or very egregious).

Florida: Florida's code, at §773.01, *et. seq.*, provides that "equine activity sponsors" and "equine professionals" are not liable for injuries to participants or the death of a participant resulting from risks inherent to equine activities, including the propensity of

² *Saccante v. LaFlamme*, 2002 WL 31687214

³ *Riehl v. B & B Livery, Inc.*, 944 P.2d 642, (1997).

an equine to behave in ways that may result in injury; the unpredictability of an equine's reaction to such things as sound, sudden movement, unfamiliar objects, people or other animals; hazards such as surface and subsurface conditions; collisions with other equines or objects; and the potential of a participant to act in a negligent manner that may contribute to the injury of others, such as failing to maintain control of the animal or not acting within the participant's ability. Equine activity is defined as such things as fairs, competitions, shows, parades, performances, training or teaching activities, riding trips, and boarding equines, among other things. The term does not include being a spectator at an equine event.

The limitations on actions against sponsors and professionals do not apply to those who may have knowingly provided faulty tack or equipment. Similarly, the limitation does not apply when a sponsor or professional provides an equine and fails to make reasonable and prudent efforts based on the participant's own representations to determine the ability of the participant to participate in certain activities and with certain animals. Finally, the limitation on liability does not apply to the party who was in control of the land or facilities where the activity took place, and who knew or should have known of dangerous, hidden conditions on the property and thereafter failed to warn participants. Florida code also makes clear that sponsors and professionals can be held liable for intentionally injuring a participant or recklessly disregarding the rights of the participant. In other words, the statute applies only to the inherent risks of equine activity. It does not bar an action against a professional or sponsor based on intentional misconduct.

Florida also requires warning notices. The notice must be placed in at least one locations where the activity occurs, and must be in a clearly visible location proximate to the equine activity, with black letters at least one inch high, containing the following language: **"WARNING: Under Florida law, an equine sponsor or 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."** Alternatively, instead of posting a warning sign, the sponsor may give each participant a written contract containing the same language. If the warning is not posted or does not appear in the written contract, the limitations on liability do not apply.

Georgia: Georgia has a strong policy aimed at limiting the liability for equine related activities, provided they are due to the inherent risks of the sport. The first statute, Ga. Code Ann. § 4-12-1, proclaims this strong policy and states it is the intent of the legislature to limit liability for the inherent risks of horse riding. Ga. Ann. Code § 4-12-2 includes, but does not limit, the following as inherent risks of the sport: 1) the propensity of the animal to behave in ways that may result in injury, harm, or death, 2) the unpredictability of the animals reaction to sounds, sudden movements, and unfamiliar persons or objects, 3) certain hazards such as surface and subsurface conditions, 4) collisions with other animals or objects, 5) the potential of the 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.

Ga. Code Ann. § 4-12-3 specifically lists several activities that are exempted from limited liability under the statute. They include 1) providing equipment or tack the horse sponsor or instructor knows or should have known was faulty, 2) providing a horse to a

rider without taking prudent efforts to determine the ability of the participant to engage safely in the activity and to safely manage the animal based on the participant's representations of his or her ability, 3) owning, leasing, rents, or otherwise controls land or facilities where the injuries occur if there is a dangerous latent condition in such land or facilities which was know or should have been known to the sponsor, 4) commits an act or omission that constitutes willful or wanton disregard for the safety of the participant, and the act causes injury, and 5) intentionally injuring the participant. While Georgia expressly lists these actions as being exempt from protection, most states would likely agree that knowingly providing defective equipment or failing to warn about dangerous land conditions about which the sponsor was aware would not be protected.

Finally, Ga. Code Ann. § 4-12-4 provides the notice that must be both posted and placed on all written notices or contracts entered into between participants and instructors. The following wording shall be placed on contracts and signs in a clearly visible location on or near stables, corrals, or riding arenas with black lettering at least one inch in height: **Under Georgia law, an equine activity sponsor or equine professional is not liable for an injury to or the death of a participant in equine activities resulting from the inherent risks of the equine activities, pursuant to Chapter 12 of Title 4 of the Official Code of Georgia Annotated.**

In the cases involving suits for injuries sustained while riding, it seems that Georgia does a good job of upholding the intent of the statute. The cases where liability was found involved failing to warn of the horses dangers or failure to ascertain the rider's skill.

Indiana: Indiana's code, at §34-6-2-41, *et. seq.*, provides that "equine activity sponsors" and "equine professionals" are not liable for injuries to participants or the death of a participant resulting from risks inherent to equine activities, including the propensity of an equine to behave in ways that may result in injury; the unpredictability of an equine's reaction to such things as sound, sudden movement, unfamiliar objects, people or other animals; hazards such as surface and subsurface conditions; collisions with other equines or objects; and the potential of a participant to act in a negligent manner that may contribute to the injury of others, such as failing to maintain control of the animal or not acting within the participant's ability. Equine activity is defined as such things as fairs, competitions, shows, parades, performances, training or teaching activities, riding trips, and boarding equines, among other things. The term does not include being a spectator at an equine event.

The limitations on actions against sponsors and professionals do not apply to those who may have knowingly provided faulty tack or equipment. Similarly, the limitation does not apply when a sponsor or professional provides an equine and fails to make reasonable and prudent efforts based on the participant's own representations to determine the ability of the participant to participate in certain activities and with certain animals. Finally, the limitation on liability does not apply to the party who was in control of the land or facilities where the activity took place, and who knew or should have known of dangerous, hidden conditions on the property and thereafter failed to warn participants. Indiana code also makes clear that sponsors and professionals can be held liable for intentionally injuring a participant or recklessly disregarding the rights of the participant.

In other words, the statute applies only to the inherent risks of equine activity. It does not bar an action against a professional or sponsor based on intentional misconduct.

Indiana also requires warning notices. The notice must be placed in at least one locations where the activity occurs, and must be in a clearly visible location proximate to the equine activity, with black letters at least one inch high, containing the following language: **"WARNING: Under Indiana law, an equine professional is not liable for injury to, or the death of, a participant in equine activities resulting from the inherent risks of equine activities."** This language must also appear in all written contracts relating to equine activities. If the warning is not posted or does not appear in the written contract, the limitations on liability do not apply.

Kentucky: Kentucky's laws relating to equine activity are embedded in its "farm animal activity" statutes, appearing at KRS §§247.401 to 247.4029. These sections provide that "farm animal activity sponsors" and "farm animal professionals" have a duty to warn participants of the inherent risks of farm animal activities, which are defined as shows, fairs, exhibits competitions, testing, riding, inspecting, evaluating, training, teaching, and boarding farm animals, including equines. Professionals and sponsors do not, however, have a duty to eliminate such inherent risks. are not liable for injuries to participants or the death of a participant resulting from risks inherent to equine activities, including the propensity of an equine to behave in ways that may result in injury; the unpredictability of an equine's reaction to such things as sound, sudden movement, unfamiliar objects, people or other animals; hazards such as surface and subsurface conditions; collisions with other equines or objects; and the potential of a participant to act in a negligent manner that may contribute to the injury of others, such as failing to maintain control of the animal or not acting within the participant's ability

Participants are charged with the responsibility to act in a safe and responsible manner at all times to avoid injury and to be aware of the risks inherent in farm animal activities to the best of the participant's ability.

The limitations on actions against sponsors and professionals do not apply to those who may have knowingly provided faulty tack or equipment. Similarly, the limitation does not apply when a sponsor or professional provides an equine and fails to make reasonable and prudent efforts based on the participant's own representations to determine the ability of the participant to participate in certain activities and with certain animals. Finally, the limitation on liability does not apply to the party who was in control of the land or facilities where the activity took place, and who knew or should have known of dangerous, hidden conditions on the property and thereafter failed to warn participants. Kentucky code also makes clear that sponsors and professionals can be held liable for negligently injuring a participant or recklessly disregarding the rights of the participant. In other words, the statute applies only to the inherent risks or equine activity. It does not bar an action against a professional or sponsor based on intentional or negligent misconduct.

Kentucky also requires warning notices. The notice must be placed in at least one locations where the activity occurs, and must be in a clearly visible location proximate to the equine activity, with black letters at least one inch high, containing the following

language: **"WARNING: Under Kentucky law, a farm 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."** This language must also appear in clearly readable print in all written contracts relating to equine activities. If the warning is not posted or does not appear in the written contract, the limitations on liability do not apply. If a participant or a parent or guardian signs a contract including such language, the contract constitutes a binding waiver, except as to causes of action for negligence. There is no duty to warn a participant engaged in an activity with his own farm animal or a participant who is known to possess reasonable knowledge of or experience with the inherent risks of farm animals.

Maine: Maine's equine liability statute appears at Title 7, §4103-A of the Maine Revised Statutes. The statute precludes liability of sponsors for personal or property damage arising from the inherent risks associated with equine activities. Further, "[e]ach participant has the sole responsibility for knowing the range of that person's ability to manage, care for and control a particular equine or perform a particular equine activity. It is the duty of each participant to act within the limits of the participant's own ability, to maintain reasonable control of the particular equine at all times while participating in an equine activity, to heed all warnings and to refrain from acting in a manner that may cause or contribute to the injury of any person or damage to property." *Further, the limitation on liability arises only if the participant had actual knowledge of the inherent risks of equine activities; had professed to have sufficient knowledge or experience to be on notice of the inherent risks; or had been notified of the inherent risks and the limitations of liability.*

At subsection 3, the statute provides, "For the purposes of this subsection, notice of the inherent risks of equine activity may be satisfied either by a statement signed by the person injured or by a sign or signs prominently displayed at the place where the equine activity was initiated. The statement or sign must contain at least the following information: **'WARNING Under Maine law, an equine professional has limited liability for an injury or death resulting from the inherent risks of equine activities.'** The message on a sign must be in black letters at least one inch in height and the sign or signs must be placed in a clearly visible location on or near stables, corrals or arenas where the equine professional conducts equine activities."

The statute also establishes exceptions to the limitation on liability. Specifically, if the sponsor knowingly provides faulty equipment or fails to warn of a dangerous latent condition on the property where the activity is conducted, the sponsor is liable. Likewise, the sponsor is liable for injuries caused by the sponsor's reckless or intentional conduct. In addition, sponsors are not immune from liability for injuries to non-participants who are in a place where a reasonable person would not expect an equine activity to occur, or spectators who are in a place designated or intended for spectators.

Massachusetts: The Massachusetts statute is identical to the preceding Georgia statute in its wording and intent. The applicable statute in Massachusetts is M.G.L.A. 128 § 2D. The same inherent risks and exceptions to these inherent risks as those listed in the Georgia statute are listed.

Just as Georgia, Massachusetts has a posting requirement that must also be included in all written contracts between horse rider and sponsors. The language, which must be included in all contracts and posted in one-inch black letters in a clearly visible location in the proximity of the riding activity must include: **Warning: Under Massachusetts 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 2D of chapter 128 of the General Laws.**

Michigan: Michigan law provides that "equine activity sponsors" and "equine professionals" are not liable for injuries to participants or the death of a participant resulting from risks inherent to equine activities, including, but not limited to the propensity of an equine to behave in ways that may result in injury; the unpredictability of an equine's reaction to such things as sound, sudden movement, unfamiliar objects, people or other animals; hazards such as surface and subsurface conditions; and collisions with other equines or objects. MCLS §691.1662, *et. seq.* Equine activity is defined as such things as fairs, competitions, shows, parades, performances, training or teaching activities, riding trips, and boarding equines, among other things.

The limitations on actions against sponsors and professionals do not apply to those who may have knowingly provided faulty tack or equipment. Similarly, the limitation does not apply when a sponsor or professional provides an equine and fails to make reasonable and prudent efforts based on the participant's own representations to determine the ability of the participant to participate in certain activities and with certain animals. The statute also states that a professional or sponsor shall not rely on a participant's representations of his or her ability unless those representations are supported by reasonably sufficient detail. Finally, the limitation on liability does not apply to the party who was in control of the land or facilities where the activity took place, and who knew or should have known of dangerous, hidden conditions on the property and thereafter failed to warn participants. Michigan code also makes clear that sponsors and professionals can be held liable for negligently injuring a participant. The statute applies only to the inherent risks of equine activity. It does not bar an action against a professional or sponsor based on negligence.

Michigan also requires warning notices. The notice must be placed in at least one locations where the activity occurs, and must be in a clearly visible location proximate to the equine activity, with letters at least one inch high, containing the following language: **"WARNING: Under the Michigan equine activity liability act, an equine professional is not liable for an injury to or the death of a participant in an equine activities resulting from an inherent risks of the equine activity."** This language must also appear in clearly readable print in all written contracts relating to equine activities. Though most state codes provide that failure to post the warning negates the limitations on liability, Michigan's code does not contain this language.

Missouri: Missouri limits liability for equine activities at Code Section § 537.325. An equine activity sponsor, an equine professional or any other person or corporation shall not be liable for an injury to or the death of a participant resulting from the inherent risks of equine activities and no participant or a 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 from injury, loss, damage or death of the participant resulting from any of the inherent risks of equine activities.

This section shall not apply to the horse racing industry or to any employer-employee relationship governed by the provisions of, and for which liability is established pursuant to Missouri law.

Further, the statute shall not prevent or limit the liability of an equine activity sponsor, an equine professional or any other person if the equine activity sponsor, equine professional or person: (1) Provided the equipment or tack and knew or should have known that the equipment or tack was faulty and such equipment or tack was faulty to the extent that it did cause the injury; or (2) Provided the equine and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity and determine the ability of the participant to safely manage the particular equine based on the participant's age, obvious physical condition or the participant's representations of his ability; (3) Owns, leases, rents or otherwise is in lawful possession and control of the land or facilities upon which the participant sustained injuries because of a dangerous latent condition which was known to the equine activity sponsor, equine professional or person and for which warning signs have not been conspicuously posted; (4) Commits an act or omission that constitutes willful or wanton disregard for the safety of the participant and that act or omission caused the injury; (5) Intentionally injures the participant; (6) Fails to use that degree of care that an ordinarily careful and prudent person would use under the same or similar circumstances.

Finally, this statute shall not prevent or limit the liability of an equine activity sponsor or an equine professional under liability provisions as set forth in any other section of law.

According to the Missouri statute, "engages in an equine activity", means riding, training, assisting in medical treatment of, driving or being a passenger upon an equine, whether mounted or unmounted, or any person assisting a participant or any person involved in show management. The term "engages in an equine activity" does not include being a spectator at an equine activity, except in cases where the spectator places himself in an unauthorized area; "equine activity" means shows, fairs, competitions, performances or parades that involve any or all breeds of equines and any of the equine disciplines, including, but not limited to, dressage, hunter and jumper horse shows, grand prix jumping, three-day events, combined training, rodeos, driving, pulling, cutting, polo, steeplechasing, English and western performance riding, endurance trail riding and western games and hunting; (b) Equine training or teaching activities or both; (c) Boarding equines; (d) Riding, inspecting or evaluating an equine

belonging to another, whether or not the owner has received some monetary consideration or other thing of value for the use of the equine or is permitting a prospective purchaser of the equine to ride, inspect or evaluate the equine; (e) Rides, trips, hunts or other equine activities of any type however informal or impromptu that are sponsored by an equine activity sponsor; and (f) Placing or replacing horseshoes on an equine;

"Equine activity sponsor" is an individual, group, club, partnership or corporation, whether or not operating for profit or nonprofit, or any employee thereof, 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, pony ride strings, fairs and arenas at which the activity is held; "Equine professional" is a person engaged for compensation, or an employee of such a person engaged:(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;

"Inherent risks of equine activities", are those dangers or conditions which are an integral part of equine activities, including but not limited to: (a) The propensity of any equine to behave in ways that may result in injury, harm or death to persons on or around it; (b) The unpredictability of any 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 ability.

According to the statute, every equine activity sponsor shall post and maintain signs which contain the warning notice specified in this subsection. Such signs shall be placed in a clearly visible location on or near stables, corrals or arenas where the equine professional conducts equine activities if such stables, corrals or arenas are owned, managed or controlled by the equine professional. The warning notice specified in this subsection shall appear on the sign in black letters on a white background with each letter to be a minimum of one inch in height. Every written contract entered into by an equine professional and equine activity sponsor for the providing of professional services, instruction or the rental of equipment or tack or an equine to a participant, whether or not the contract involves equine activities on or off the location or site of the equine professional's or equine activity sponsor's business, shall contain in clearly readable print the warning notice specified in this subsection. The signs and contracts described in this subsection shall contain the following warning notice: "**WARNING:** Under Missouri 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 the Revised Statutes of Missouri."

New Hampshire: New Hampshire law provides that equine activity sponsors, equine professionals, and equine participants are not liable for injuries to participants or the

death of a participant resulting from risks inherent to equine activities, including, but not limited to the propensity of an equine to behave in ways that may result in injury; the unpredictability of an equine's reaction to such things as sound, sudden movement, unfamiliar objects, people or other animals; hazards such as surface and subsurface conditions; collisions with other equines or objects; or the potential of a participant to act in a negligent manner that may contribute to injury, such as failing to maintain control over an animal or not acting within the participant's ability. This last section does not apply where the sponsor or professional could have recognized the risks presented by the participant's skill level and acted to correct such risks. RCA §508.10. Equine activity is defined as such things as fairs, competitions, shows, parades, performances, training or teaching activities, riding trips, or boarding equines, among other things. "Engaging in an equine activity" also includes assisting in the medical treatment of an equine or riding as a passenger in a vehicle drawn by equines. The term does not include being a spectator at an equine event.

The statute also provides that each participant shall have the sole responsibility for knowing the range or his or her ability to manage, care for, and control a particular equine or to perform a particular equine activity. It shall be the duty of each participant to act within the limits of the participant's own ability, to maintain reasonable control of the equine at all times, to heed all posted warning, and to refrain from acting in a manner which may cause or contribute to injury.

The limitations on actions against sponsors and professionals do not apply to those who may have knowingly provided faulty tack or equipment. Similarly, the limitation does not apply when a sponsor or professional provides an equine and fails to make reasonable and prudent efforts based on the participant's own representations to determine the ability of the participant to participate in certain activities and with certain animals. The statute also states that a professional or sponsor shall not rely on a participant's representations of his or her ability unless those representations are supported by reasonably sufficient detail. Finally, the limitation on liability does not apply to the party who was in control of the land or facilities where the activity took place, and who knew or should have known of dangerous, hidden conditions on the property and thereafter failed to warn participants. New Hampshire code also makes clear that sponsors and professionals can be held liable for "willful or wanton" or "intentional" conduct that injures participants. In other words, the statute applies only to the inherent risks of equine activity. It does not bar an action against a professional or sponsor based on egregious misconduct.

New Hampshire code does not require the posting of warning notices.

New Jersey: New Jersey's statute provides, "A participant and spectator are deemed to assume the inherent risks of equine animal activities created by equine animals, weather conditions, conditions of trails, riding rings, training tracks, equestrians, and all other inherent conditions. Each participant is assumed to know the range of his ability and it shall be the duty of each participant to conduct himself within the limits of such ability to maintain control of his equine animal and to refrain from acting in a manner which may cause or contribute to the injury of himself or others, loss or damage to

person or property, or death which results from participation in an equine animal activity."

In addition, posting requirements in New Jersey mandate: All operators shall post and maintain signs on all lands owned or leased thereby and used for equine activities, which signs shall be posted in a manner that makes them visible to all participants and which shall contain the following notice in large capitalized print:

"WARNING: UNDER NEW JERSEY LAW, AN EQUESTRIAN AREA OPERATOR IS NOT LIABLE FOR AN INJURY TO OR THE DEATH OF A PARTICIPANT IN EQUINE ANIMAL ACTIVITIES RESULTING FROM THE INHERENT RISKS OF EQUINE ANIMAL ACTIVITIES, PURSUANT TO P.L.1997, c.287 ([C.5:15-1](#) et seq.)."

Individuals or entities providing equine animal activities on behalf of an operator, and not the operator, shall be required to post and maintain signs required by this section.

North Carolina: North Carolina's Equine Activity Liability Act ["the Act"] was enacted in 1997 and appears at N.C. General Statutes §99E-1 through §99E-3. For purposes of the statute, equine activity means "any activity involving an equine" and "engage in equine activity" means "participate in an equine activity, assist a participant in an equine activity, or assist an equine activity sponsor or equine professional. The term "engage in an equine activity" does not include being a spectator at an equine activity, except in cases in which the spectator places himself in an unauthorized area and in immediate proximity to the equine activity."

"Equine activity sponsor" means an "individual, group, club, partnership, or corporation, whether the sponsor is operating for profit or nonprofit, which sponsors, organizes, or provides the facilities for an equine activity. The term includes operators and promoters of equine facilities." The statute also contains a definition for "equine professional," which can include, among other things, a person who instructs individuals in equine activities. Finally, the statute defines "Inherent risks of equine activities" as those "dangers or conditions that are an integral part of engaging in an equine activity, including any of the following: a) The possibility of an equine behaving 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, unfamiliar objects, persons, or other animals." The inherent risks of equine activities do not include a collision or accident involving a motor vehicle.

In the section limiting liability, the statute provides that equine sponsors and professionals and "any other person" involved in equine activities shall not be liable for the death or injury of a participant caused by the inherent risks of equine activities. The term "any other person" presumably applies to participants as well, such that participants are not liable to each other for death or injuries arising from inherent risks, though the North Carolina Courts have not addressed this issue specifically. The statute goes on to state that no participant or participant's agent is entitled to maintain an action against equine sponsors and/or professionals from injuries caused "exclusively" by inherent risks. The inclusion of the word "exclusively" seems to indicate

that participants can maintain actions for injuries caused by a combination of inherent risks and other factors, though there is no case law yet to support this..

The statute specifically excludes certain activities from the limitation on liability. Thus, professionals and sponsors are liable for injuries when they: (1) provide the equipment or tack, and knew or should have known that the equipment or tack was faulty, and such faulty equipment or tack proximately caused the injury, damage, or death; (2) provide the equine and fail to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity or to safely manage the particular equine; (3) Commit an act or omission that constitutes willful or wanton disregard for the safety of the participant, and that act or omission proximately caused the injury, damage, or death; (4) Commit any other act of negligence or omission that proximately caused the injury, damage, or death.

Thus, it is clear that sponsors and professionals, while not liable for inherent risks, are liable for simple negligence, as well as willful and wanton acts. In North Carolina, wanton or reckless conduct is an act that manifests a disregard for the rights and safety of others.⁴ A willful act is an "intentional failure to carry out some duty imposed by law or contract which is necessary to the safety of the person or property to which it is owed." *Se footnote case..* The statute also makes clear that the Act does not limit sponsors' and professionals' liability pursuant to product liability law.

Finally, the Act also requires that sponsors and professionals post and maintain signs containing certain warnings, or risk losing their limited liability. The signs should be clearly visible in stables, arenas, and all other areas where equine activities are conducted. According to the Act, the signs shall be designed by the Department of Agriculture and Consumer Services and consist of black letters, with each letter to be a minimum of one inch in height. In addition, every written contract entered into by sponsors and professionals relating to equine activities must contain the same language as the posted signs. The language is as follows: **"WARNING: Under North Carolina law, an equine activity sponsor or equine professional is not liable for an injury to or the death of a participant in equine activities resulting exclusively from the inherent risks of equine activities. Chapter 99E of the North Carolina General Statutes."** Again, failure to comply with these requirements results in loss of the immunity afforded by the Act.

Ohio: The Ohio statute, O.R.C. § 2305.321, is also identical to the preceding two statutes in its listing of inherent risks and what is exempted from inherent risks of the sport. The listed "inherent risks" of the equine activity are the same as that found in Georgia and Massachusetts. The statute makes clear that the equine activity participant and his or her representatives agree to limit liability.

Going further, the Ohio statute then provides that liability can be limited in regards to the participant or a parent or personal representative of the participant provided the participant and his or her parent or guardian, if he or she is a minor, signs a valid waiver. This waiver shall be in writing and signed by the equine activity participant or

⁴ *Pleasant v. Johnson* (1985) 312 N.C. 710.

the parent or guardian and shall list each inherent risk of the equine activity as listed in the statute. The waiver shall remain valid for twelve months or until revoked in writing by the participant, or his or her parent or guardian.

Oklahoma: Oklahoma's regulations as to the inherent risks of equine activities appear in the Oklahoma Livestock Activities Liability Limitation Act, 76 Okla. St. §50.2, *et. seq.* Livestock activity sponsors and participants and livestock professionals acting in good faith and pursuant to the standards of the livestock industry shall not be liable for injuries to any person engaged in livestock activities when such injuries result from the inherent risks of livestock activities. This section does not apply to employees of sponsors who are covered by the Oklahoma workers' compensation statutes.

Oklahoma's limitation on liability for livestock sponsors does not prevent or limit the liability of the sponsor, professional or participant if he or she: (a.) commits an act or omission that constitutes willful or wanton disregard for the safety of any person engaged in livestock activities, and that act or omission caused the injury; (b.) intentionally injures a person engaged in livestock activities; (c.) provided the equipment or tack, which was faulty, and such equipment or tack was faulty to the extent that it did cause the injury. (The provisions of subparagraph c shall not apply to livestock activities sponsored by youth organizations when youth participants share equipment or tack between themselves); (d.) provided the livestock and failed to make a reasonable effort to determine the ability of the participant to manage the particular livestock based upon the participant's representations of such participant's ability. Provided, however, a participant in a livestock show, livestock sale, or rodeo shall be presumed to be competent in the handling of livestock if an entry form is required for the activity and signed by the participant, or; (e.) owns, leases, rents or otherwise is in lawful possession and control of the land or facilities upon which the participant sustained injuries because of a dangerous condition which was known to the livestock activity sponsor, livestock professional or person and not made known to the participant.

Further, the limitation on liability does not prevent or limit the liability of a livestock activity sponsor, a participant or a livestock professional: (a.) under liability provisions as set forth in the products liability laws, or; (b.) for livestock activities which result in the death of any person engaged in livestock activities from the inherent risks of livestock activities. A sponsor shall not be held vicariously liable for the acts or omission of a participant or a livestock professional.

Finally, pursuant to §50.4, two or more persons may agree, in writing, to extend the waiver of liability pursuant to the provisions of the Oklahoma Livestock Activities Liability Limitation Act. Such waiver shall be valid and binding by its terms. Oklahoma does not have specific provisions requiring posted warnings signs or notices.

[NOTE: Since Oklahoma law does not enforce a liability waiver in the event of "death", the Board of Directors of IEA on 2/13/08 voted to not accept membership applications from Oklahoma.]

Rhode Island: Rhode Island's Title 4, Section 4-21-4, provides that that equine activity sponsors and equine professionals, as defined by the statute, are not liable for injuries

to participants or the death of a participant resulting from risks inherent to equine activities, including, but not limited to the propensity of an equine to behave in ways that may result in injury; the unpredictability of an equine's reaction to such things as sound, sudden movement, unfamiliar objects, people or other animals; collisions with other equines or objects; or the potential of a participant to act in a negligent manner that may contribute to injury, such as failing to maintain control over an animal or not acting within the participant's ability.

This limitation on liability applies unless the equine activity sponsor or professional failed to exercise due care under the circumstances towards the participant. Thus, if a sponsor or professional is negligent, and there is no waiver of negligence claims by the participant, the sponsor can be held liable for its own negligent actions. Likewise, the limitation does not apply if the sponsor provides faulty equipment when it knew or should have known that the equipment or tack was faulty; failed to make reasonable efforts to determine the level of the participant's ability and manage the participant's activity based on that ability; owns, leases, rents, has authorized use of, or is otherwise in lawful possession and control of the land, or facilities upon which the participant sustained injuries because of a dangerous condition which was known or should have been known to the equine activity sponsor, equine professional, or person; Commits an act of omission that constitutes willful or wanton disregard for the safety of the participant, and that act of omission caused the injury; or intentionally injures the participant.

Rhode Island also requires, at §4-21-4, that, "Every equine professional shall post and maintain signs which contain the warning notice specified in subsection (b). These signs shall be placed in a clearly visible location in the proximity of the equine activity. The warning notice specified in subsection (b) shall appear on the sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by an equine professional for the providing of professional services, instruction, or the rental of equipment or tack or an equine to a participant, whether or not the contract involves equine activities on or off the location or site of the equine professional's business, shall contain in clearly readable print the warning notice specified in subsection (b).

The required warning is as follows: **WARNING: Under Rhode Island Law, an equine professional, unless he or she can be shown to have failed to be in the exercise of due care, 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 this chapter.**

South Carolina: South Carolina limits liability for equine activity at Code Section § 47-9-720. Specifically, an equine activity sponsor or an equine professional is not liable for an injury to or the death of a participant resulting from an inherent risk of equine activity, and no participant or participant's representative may make a claim against, maintain an action against, or recover from an equine activity sponsor, or an equine professional, for injury, loss, damage, or death of the participant resulting from an inherent risk of equine activity.

The statute does not prevent or limit the liability of an equine activity sponsor, or an equine professional, if the equine activity sponsor, or equine professional: (1)(a) provided the equipment or tack and knew or should have known that the equipment or tack was faulty, and the equipment or tack was faulty to the extent that it caused the injury; or (b) provided the equine and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity and to manage safely the particular equine based on the participant's representations of his ability; (2) owns, leases, rents, or otherwise is in lawful possession and control of the land or facilities upon which the participant sustained injuries because of a dangerous latent condition which was known or should have been known to the equine activity sponsor, equine professional, or person and for which warning signs have not been conspicuously posted; (3) committed an act or omission that constitutes willful or wanton disregard for the safety of the participant and that act or omission caused the injury; or (4) intentionally injured the participant.

Further, the statute does not prevent or limit the liability of an equine activity sponsor or an equine professional under liability provisions as set forth in the products liability laws.

South Carolina Code § 47-9-710 defines "engaging in an equine activity" as riding, training, providing, or assisting in providing medical treatment of, driving, or being a passenger upon an equine, mounted or unmounted, or a person assisting a participant or show management. It does not include being a spectator at an equine activity, except in cases where the spectator places himself in an unauthorized area and in immediate proximity to the equine activity. "Equine activity" means: (a) an equine show, fair, competition, performance, or parade that involves a breed of equine and an equine discipline, including, but not limited to, dressage, hunter and jumper horse shows, grand prix jumping, three-day events, combined training, rodeos, driving, pulling, cutting, polo, steeplechasing, English and western performance riding, endurance trail riding and western games, and hunting; (b) equine training or teaching activities, or both; (c) boarding equines; (d) riding, inspecting, or evaluating an equine belonging to another, whether the owner has received monetary consideration or another thing of value for the use of the equine or is permitting a prospective purchaser of the equine to ride, inspect, or evaluate the equine; (e) a ride, trip, hunt, or other equine activity, however informal or impromptu, that is sponsored by an equine activity sponsor; (f) placing or replacing a horseshoe on an equine; (g) examining or administering medical treatment to an equine by a veterinarian.

"Equine activity sponsor" means an individual, a group, a club, a partnership, or a corporation, whether the sponsor is operating for profit or nonprofit, which sponsors, organizes, or provides the facilities for an equine activity, including, but not limited to, a pony club, 4-H club, hunt club, riding club, school and college-sponsored class, program, and activity, therapeutic riding program, and an operator, instructor, and promoter of an equine facility, including, but not limited to, a stable, clubhouse, ponyride string, fair, and an arena at which the activity is held. "Equine professional" means a person engaged for compensation in: (a) instructing a participant or renting to a participant an equine for the purpose of riding, driving, or being a passenger upon the

equine; (b) renting equipment or tack to a participant; or (c) examining or administering medical treatment to an equine as a veterinarian.

"Inherent risk of equine activity" means those dangers or conditions which are an integral part of equine activities, including, but not limited to:(a) the propensity of an equine to behave in ways that may result in injury, harm, or death to a person on or around the equine;(b) the unpredictability of an equine's reaction to sound, sudden movement, an unfamiliar object, a person, or another animal;(c) certain hazards such as surface and subsurface conditions;(d) collisions with other equines 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, as failing to maintain control over the animal or not acting within the participant's ability.

Equine activity sponsors must place specific signs in a clearly visible location on or near stables, corrals, or arenas where the equine professional or the equine activity sponsor conducts equine activities. The signs must appear on the sign in black letters with each letter a minimum of one inch in height and must contain the warning mentioned below. A written contract entered into by an equine professional or by an equine activity sponsor to provide professional services, instruction, or rental of equipment, tack, or an equine to a participant, whether or not the contract involves equine activities on or off the location or site of the business of the equine professional or the equine activity sponsor, must contain in clearly readable print the same warning notice, as follows:

"WARNING: Under South Carolina law, an equine activity sponsor or equine professional is not liable for an injury to or the death of a participant in an equine activity resulting from an inherent risk of equine activity, pursuant to Article 7, Chapter 9 of Title 47, Code of the Laws of South Carolina, 1976."

According to the statute, failure to comply with the requirements concerning warning signs and notices provided in this section prevents an equine activity sponsor or equine professional from invoking the privileges of immunity provided by the statute.

Texas: Texas statutes relating to limitations on liability for equine activity appear at §§87.003 to 87.005 of the Texas Civil Practice and Remedies Code. These statutes provide that any person, including an equine activity sponsor, equine professional, livestock show participant, or livestock show sponsor, is not liable for property damage or damages arising from the personal injury or death of a participant in an equine activity or livestock show if the property damage, injury, or death results from the dangers or conditions that are an inherent risk of an equine activity or the showing of an animal on a competitive basis in a livestock show, including:(1) the propensity of an equine or livestock animal to behave in ways that may result in personal injury or death to a person on or around it;(2) the unpredictability of an equine or livestock animal's reaction to sound, a sudden movement, or an unfamiliar object, person, or other animal;(3) with respect to equine activities, certain land conditions and hazards, including surface and subsurface conditions;(4) a collision with another animal or an object; or(5) the potential of a participant to act in a negligent manner that may

contribute to injury to the participant or another, including failing to maintain control over the equine or livestock animal or not acting within the participant's ability.

There are certain exceptions to the limitations on liability in Texas. A person, including an equine activity sponsor, equine professional, livestock show participant, or livestock show sponsor, is liable for property damage or damages arising from the personal injury or death caused by a participant in an equine activity or livestock show if:(1) the injury or death was caused by faulty equipment or tack used in the equine activity or livestock show, the person provided the equipment or tack, and the person knew or should have known that the equipment or tack was faulty;(2) the person provided the equine or livestock animal and the person did not make a reasonable and prudent effort to determine the ability of the participant to engage safely in the equine activity or livestock show and determine the ability of the participant to safely manage the equine or livestock animal, taking into account the participant's representations of ability;(3) the injury or death was caused by a dangerous latent condition of land for which warning signs, written notices, or verbal warnings were not conspicuously posted or provided to the participant, and the land was owned, leased, or otherwise under the control of the person at the time of the injury or death and the person knew of the dangerous latent condition;(4) the person committed an act or omission with wilful or wanton disregard for the safety of the participant and that act or omission caused the injury;(5) the person intentionally caused the property damage, injury, or death; or (6) with respect to a livestock show, the injury or death occurred as a result of an activity connected with the livestock show and the person invited or otherwise allowed the injured or deceased person to participate in the activity and the injured or deceased person was not a participant as defined by Section 87.001(9)(B).

Warning notices are required in Texas. An equine professional shall post and maintain a sign that contains the warning if the professional manages or controls a stable, corral, or arena where the professional conducts an equine activity. The professional must post the sign in a clearly visible location on or near the stable, corral, or arena. Further, an equine professional shall include the warning in every written contract that the professional enters into with a participant for professional services, instruction, or the rental of equipment or tack or an equine animal. The warning must be included without regard to whether the contract involves equine activities on or off the location or site of the business of the equine professional. The warning must be clearly readable.

The warning is as follows: WARNING UNDER TEXAS LAW (CHAPTER 87, CIVIL PRACTICE AND REMEDIES CODE), 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.

Virginia: The Virginia Statutes begin with Va. Code. Ann. § 31.-796.130 which lists the same intrinsic dangers (Virginia's version of inherent risk) of horse riding as do the Georgia, Mass. and Ohio statutes. Va. Code Ann. § 3.1-796.132 expressly limits liability of equine activity sponsors and professionals from liability resulting from the intrinsic dangers of the equine activity owed to participants or there parents or representatives.

Similar to Ohio, the Virginia statute also expressly states that the parent or guardian of a participant who has knowingly executed a waiver of his rights to sue or agrees to assume all risks listed in the statute may not maintain an action against or recover from an equine activity sponsor for injury or death to the participant. The waiver shall give notice to the participant of the intrinsic dangers of equine activities. The waiver will remain valid unless expressly revoked in writing by the participant or parent or guardian.

States Without Equine Liability Statutes

California: With no statute aimed directly at horse riding, other areas of California law must be analyzed. First of all, Cal. Pub. Res. Code § 5070.5, states that it is the policy of the state to encourage horseback riding as an important contributor to the health and welfare of the state.

In general, the cases analyzed indicate that California Courts treat recreational activity injuries similar to those in states where the express statutes exist. For example, in a California Appellate Court case,⁵ an ice skater attempted to sue the ice skating club after she was cut by another skater's blade. The court of appeals ruled that "generally, participation in an active sport is governed by primary assumption of the risk, and defendant owes no duty of care to protect plaintiff against risks inherent to the sport." Also, the Court states that as long as Defendant does nothing to increase the risks of a particular activity there will be no liability, which basically encompasses the same thing as the above statutes like providing defective equipment or failing to warn about latent defects on the land or facilities.

Maryland: Maryland does not have an equine activity statute, though case law indicates that Maryland courts are willing to protect sponsors and professionals from liability arising from inherent risks. The Court of Special Appeals of Maryland addressed this issue in *Kelly v. McCarrick*,⁶ cited below, involving a participant in a youth softball organization who was injured when another player slid into a base. Voluntary participation in a sporting activity, held the court, constitutes an assumption of the inherent risks of that sport. Specifically, the court held that "defendants generally do not have a duty to protect the plaintiff from the risks inherent in the sport[.]" Courts in Maryland have also indicated that equine professionals and sponsors, though they are insulated from liability for inherent risks, may be liable for such things as the provision of faulty tack⁷ or the negligent mismatch of rider and horse. Maryland premises liability law is also helpful in understanding potential risks of liability for equine sponsors. While landowners have a duty to maintain their property in a reasonably safe manner, and to warn of latent dangers, they do not have a duty to warn of open and obvious dangers. In *Maryland v. Thurston*,⁸ the Maryland Court of Special Appeals held that a 40-foot gap in

⁵ *Webster v. Ebright*, 3 Cal. App. 4th 784, (1992).

⁶ *Kelly v. McCarrick*, 155 Md. App. 82 (2002).

⁷ *Pahanish v. Western Trails, Inc.*, 69 Md. App. 342 (1986).

⁸ *Maryland v. Thurston*, 128 Md. 656 (1999).

a white rail around a horse track was not a latent danger, and the track owner had no duty to post warnings about the gap.

New York: New York's Annotated General Obligations Laws § 5-326 expressly states that New York has a policy of disfavoring any covenant, agreement, or understanding in connection with any membership or participation using recreational or amusement facilities that attempts to limit liability if the owner charges a fee for admission. Dealing specifically with horse riding facilities, the case law of New York makes a distinction. Riding stables that leased horses to customers and a company that provided two day horseback riding excursions were considered "places of amusement or recreation," making any waiver signed by their participants void as against public policy.⁹ However, an equestrian center where a rider was injured during a riding lesson was not a "place of amusement" within the meaning of the statute.¹⁰ The distinction that courts make is that if a fee is paid for admission, the waivers will be unenforceable, but if the fee is only for lessons, the waivers can be upheld.

When dealing with the effects of waivers, the courts have required the waiver to be unambiguous and list all inherent risks.¹¹ A valid waiver must also contain provision holding the sponsor exempt from liability for any negligence related to the student's participation. In one case, the court found that a horse kicking or acting in an unintended manner is inherent, usual, and ordinary.

Pennsylvania: In Pennsylvania, the assumption of the risk doctrine is a viable defense for plaintiffs if they can show that plaintiff voluntarily and knowingly proceeded in the face of obvious and dangerous condition and thereby must be viewed as relieving the equine sponsor of responsibility for injuries. In most instances, assumptions of the risk cases are questions of fact, which means that a jury will decide the issue.

While no cases directly dealing with assumption of the risk and horse riding were found, a case involving baseball¹² stated that owners of the stadium cannot be found liable for injuries resulting from the inherent risks of the game. Therefore, it seems that in Pennsylvania, any suit brought against I.E.A. will be scrutinized by a jury to see if the injury was the result of an inherent risk of riding and if the sponsor was negligent. Negligence in Pennsylvania requires a showing that the Defendant owed a duty to the Plaintiff that was breached. Therefore, if an injury occurs that was a result of and inherent risk and not the result of I.E.A. failing a duty it owed to the riders, the suit should not succeed.

Release of Liability from Negligence:

Before equine activity statutes were enacted beginning in the mid-1980's, the primary means an equine sponsor had to protect itself from liability for negligence was a release

⁹ *Filson v. Cold River Trial Rides, Inc.*, 242 A.D. 2d 775, (1997).

¹⁰ *Salazar v. Riverdale Riding Corp.*, 183 Misc. 2d 145, (1999).

¹¹ *Lemoine v. Cornell*, 2 A.D. 3d 1017, (2003).

¹² *Rees v. Cleveland Indians Baseball Co., Inc.*, 2004 WL 2610531, (2004).

or waiver attempting to limit liability signed by the injured customer or participant prior to the accident. Because these releases attempt to prevent liability even for negligent behavior of the sponsor, courts will only uphold them when the language is clear and unambiguous and it can be shown that the person who signed it completely understood the nature of what they were signing. For this reason, great attention should be given to explicitly explaining what types of negligent behavior may occur to the participant.

Therefore, IEA should institute a program to assure that the participants and their parents/guardians are given all inherent risks and intrinsic dangers information in great detail and to verify that they were fully aware that they were signing away their rights to sue for even negligent behavior. We recommend that this legal memorandum and a Notice of Liability and Risk Assessment be posted on the website and have the parents/guardians and riders acknowledge they have reviewed and read them. Always remember that liability for gross negligence (very severe) or intentional conduct can never be released by contract.

California: The Supreme Court of California has developed a six-factor test for determining whether exculpatory agreements are unenforceable because they violate public policy. The six factors are quoted below from the case of *Tunkl v. Regents of the University of California*.¹³ An exculpatory clause is invalid as against public policy if:

1) It concerns a business of a type generally thought suitable for public regulation. 2) The party seeking exculpation is engaged in performing a service of great importance to the public, which is often a matter of practical necessity for some members of the public. 3) The party holds himself out as willing to perform this service for any member of the public who seeks it, or at least for any member coming within certain established standards. 4) As a result of the essential nature of the service, in the economic setting of the transaction, the party invoking exculpation possesses a decisive advantage of bargaining strength against any member of the public who seeks his services. 5) In exercising a superior bargaining power the party confronts the public with a standardized adhesion contract of exculpation, and makes no provision whereby a purchaser may pay additional reasonable fees and obtain protection against negligence. 6) Finally, as a result of the transaction, the person or property of the purchaser is placed under the control of the seller, subject to the risk of carelessness by the seller or his agents.

*Applying these factors, at least one California appellate court has upheld a negligence waiver in the context of equine activities.*¹⁴ Because horseback riding is not an activity of "public interest," as defined by California courts, courts there are more likely to uphold exculpatory agreements. (This stands in sharp contrast to the Connecticut decision in which the court held that recreational activities could be of significant public interest.)

¹³ 60 Cal. 2d. 92 (1963).

¹⁴ *Guido v. Koopman*, 1. Cal. App. 4th 837 (1991).

Colorado: Colorado courts have adopted a modified version of the *Tunkl* factors, holding in *Jones v. Dressel* that, "in determining whether an exculpatory agreement is valid, there are four factors which a court must consider: [1] the existence of a duty to the public; [2] the nature of the service performed; [3] whether the contract was fairly entered into; and [4] whether the intention of the parties was expressed in clear and unambiguous language."¹⁵

These factors suggest Colorado courts are willing to uphold exculpatory agreements so long as the terms are clear and unambiguous and patrons were not under duress to sign. In 2004, the Supreme Court of Colorado addressed exculpatory agreements in the context of equine activities and held that participants can validly waive negligence claims because equine activities are not of great public interest.¹⁶ So long as the waiver is clear and the agreement was fair, Colorado courts will uphold exculpatory agreements releasing equine operators from claims of negligence. (NOTE: Colorado courts will not uphold waivers that release operators from claims for wanton, or severe, negligence).

Connecticut: It is important to note that courts in some jurisdictions will not enforce waivers of negligence, even if such waivers are clear and unambiguous and the participants understand what they are signing. On November 29, 2005, the Supreme Court of Connecticut released a decision addressing the validity of contractual provisions purporting to release a proprietor or other business entity from responsibility for injuries or losses resulting from its own negligence.¹⁷ The recent Connecticut decision holds that such waivers are not enforceable if they contravene public policy. In turn, waivers are against public policy if participants are prevented from bringing claims against proprietors or operators who had "care and control" of the recreational space and equipment giving rise to the injury.

More specifically, the Connecticut court's definition of care and control suggests that if a recreational operator controls the creation, design and operation of the recreational space, and supplies patrons with the necessary equipment and supplies to participate in the activity, it is against public policy to allow operators to escape liability for their own negligence in maintaining the space and equipment. This is especially true when the participant is equipped with less knowledge than the operator about how to ensure that the recreational space and equipment are maintained in safe order. The court also considered the public policy interest of encouraging and supporting recreational activities, finding that to limit operators' responsibility for negligence would discourage, not encourage, such activities. Though this particular Connecticut decision does not address equine activity specifically, the court indicates its decision is intended to apply to a wide range of recreational activities. It is safe to assume equine activities would be in that range. In light of the recent Connecticut decision, a brief review of other states' "waiver" law is prudent.

¹⁵ 623 P. 2d 370, (1981).

¹⁶ *Chadwick v. Colt Ross Outfitters, Inc.*, 100 P. 3d 465 (2004).

¹⁷ *Hanks v. Powder Ridge Restaurant Corp.*, et. al., 2005 Conn. LEXIS 500.

Florida: Florida appellate courts have held that waivers purporting to release equine activity sponsors from liability for negligence are enforceable so long as they are clear and unequivocal.¹⁸ Such agreements must expressly state that the signator is waiving all claims, including claims for negligence. However, when the signator is a minor, the negligence waiver will not be upheld. A parent, in other words, cannot waive a minor child's right to bring claims for negligence and waivers in such cases will not be upheld.

Georgia: Georgia courts uphold exculpatory agreements for simple negligence, but not gross negligence.¹⁹ The analysis hinges on the "nature of the activity" involved, meaning that waivers for negligence involving recreational activities will often be upheld.

Indiana: Appellate courts in Indiana have upheld waivers of tort liability in the context of equine activities, even when the waiver did not specifically state that the signator was waiving negligence claims. In one instance in 2006, the participant signed a waiver releasing the sponsor from "all claims."²⁰ The waiver did not specifically state that the participant was releasing claims based on negligence, but it did contain language releasing the sponsor from liability for the inherent risks of equine activities. Because the injury's complained of were based on the inherent risks, the waiver was sufficient to bar the Plaintiff's claims. Had the injuries been based on the defendant's own negligence, the court most likely would have required a more specific reference to negligence claims in the waiver. In sum, the best policy in Indiana is to specifically include language to indicate that the signator will be waiving all claims, including claims based on negligence and inherent risks.

Kentucky: Kentucky courts hold that, absent fraud or overreaching, contracts releasing activity sponsors from liability, even for their own negligence, will be upheld. *In Boggs v Paducah International Raceway*,²¹ citation below, appellant was injured in a wreck. He had voluntarily signed a waiver releasing the Raceway from all claims for injuries sustained during racing activities. The Court held that such release agreements do not violate public policies. Further, the Court stated that Kentucky public policy actually favors such agreements because if activity sponsors could not limit their liability, no one would sponsor sporting events in the state of Kentucky. Thus, if the agreement is signed voluntarily, and the language is clear and unambiguous, liability waivers will be upheld in the state of Kentucky.

Maine: Maine enforces contractual exclusions of negligence liability, but only if the contract "spells out the intention of the parties with the greatest of particularity and shows the intent to release from liability beyond doubt by express stipulation."²² As such, a purported waiver which does not specifically, and with great detail, inform the participant that they are waiving negligence claims against specifically-identified parties, will not be enforced. Contract provisions whereby the participant agrees to indemnify

¹⁸ *Dilallo v. Riding Safely, Inc.*, 697 So. 2d 353 (1997).

¹⁹ *McFann v. Sky Warriors Inc.*, 268 Ga. App. 750 (2004).

²⁰ *Anderson v. Four Seasons Equestrian Center, Inc.* 852 N.E. 2d 576 (2006).

²¹ *Boggs v. Paducah International Raceway* (July 4, 1986) Court of Appeals of Ky., Case No. 85-CA-552-MR.

²² *Doyle v. Bowdoin College*, 403 A. 2d 1206, (1979), quoting *Employers Liability Assurance Corp. v. Greenville Business Men's Assoc.*, 423. Pa. 288, (1966).

the operator for negligence claims are evaluated by Maine courts in much the same way. Unless the intention to indemnify is clear on the face of the contract, such provisions will not be enforced.

Massachusetts: Massachusetts upholds exculpatory agreements for simple negligence, but not gross negligence.²³ In the context of equine activities, the Massachusetts Superior Court has indicated waivers of negligence are enforceable so long as they are clear and unambiguous and the participant understands exactly which parties they are releasing from liability.²⁴

Maryland: Maryland courts will uphold exculpatory releases in certain circumstances. Maryland will not enforce such contracts if they purport to release a defendant from intentional conduct or gross negligence (a heightened form of negligence). Similarly, Maryland will not uphold releases of negligence claims if they adversely affect public policy or if the signator was in an unequal bargaining position as compared to the sponsor or professional.²⁵ Generally, in Maryland, exculpatory releases in the context of sporting activities are not viewed as adversely affecting public policy. Most importantly, if a contract is designed to exonerate a sponsor from its own negligence, this purpose must be clearly and unequivocally stated in the terms of the contract.

Michigan: Michigan courts have upheld broad exculpatory releases in the context of equine activities, even where the release does not specifically state that negligence claims are barred. In a case filed in 2000,²⁶ plaintiff brought suit to recover for injuries he suffered after the horse he was riding was startled by a kite in a tree. In reversing a lower court decision, the Court of Appeals of Michigan held that the release signed by plaintiff was clear and unambiguous in that it barred "all claims," presumably including claims based on the negligence of the equine activity sponsor itself. Even if the release were not interpreted so broadly, and the Court had allowed a claim for negligence, the plaintiff still would not have prevailed, as the circumstances in that case---a horse being startled by an unfamiliar object---constituted an inherent risk of equine activity, not negligence on the part of the sponsor.

Missouri: On the issue of exculpatory releases for negligence, the Missouri Supreme Court has held: "We are persuaded that the best policy is to follow our previous decisions and those of other states that require clear, unambiguous, unmistakable, and conspicuous language in order to release a party from his or her own future negligence. The exculpatory language must effectively notify a party that he or she is releasing the other party from claims arising from the other party's own negligence. Our traditional notions of justice are so fault-based that most people might not expect such a relationship to be altered, regardless of the length of an exculpatory clause, unless done so explicitly. General language will not suffice." *Alack v. Vic Tanny, Int'l* (1996) 923 S.W. 2d 330 (holding that an exculpatory clause that did not contain the specific word 'negligence' was too ambiguous to be enforced). Thus, the waiver of negligence must

²³ *Zavras v. Capeway Rovers Motorcycle Club., Inc.*, 44 Mass. App. 17, (1997).

²⁴ *Powers v. Mukpo*, 12 Mass. L. Rep. 517, (2000).

²⁵ *Adloo v. H.T. Brown Real Estate Inc.*, 344 Md. 254 (1996).

²⁶ *Cole v. Ladbrooke Racing Michigan, Inc.*, 241 Mich. App. 1 (2000).

contain the specific word 'negligence.' Waivers of gross negligence are never enforceable in Missouri.

New Hampshire: New Hampshire courts will enforce exculpatory agreements so long as 1) they do not violate public policy, 2) the signator understood what he or she was signing, and 3) the plaintiff's claims were within the contemplation of the parties when they executed the contract.²⁷ In *Dean* case, cited in the footnote below, plaintiff was injured while crossing a racetrack on foot. He had signed a release of liability before entering the racetrack area. The Court upheld the release because it was clear and unambiguous, and clearly released the track from any liability for its own negligence. In addition, being hit by a car on the track was certainly a risk contemplated by the parties at the time of signing, and the plaintiff had an opportunity to read and review the release before signing.

New Jersey: New Jersey courts will uphold exculpatory agreements so long as they do not undermine a statutory duty of care or contravene public policy. Recent case law indicates that the New Jersey Supreme Court takes a wide view of public policy. In the 2006 case of *Hojnowski v. Vans Skate Park*,²⁸ the Court held that a pre-injury waiver of liability signed by a parent on behalf of a minor child was void because it violated the public policy of *parens patrie*, or "the state protects those who cannot protect themselves." Thus, waivers purporting to bar a minor's potential negligence claims against a commercial recreational facility are not enforceable in New Jersey. Minor participants, by statute, assume the inherent risks of the activity, but their parents cannot waive their right to bring claims in tort.

New York: Pursuant to New York's Law of General Obligation 5-326, *negligence waivers are statutorily void as against public policy in recreational contexts*. The law states, "Every ... agreement ... in or in connection with ... any contract ... ticket of admission or similar writing, entered into between the owner or operator of any pool, gymnasium, place of amusement or recreation, or similar establishment and the user of such facilities, pursuant to which such owner ... receives a fee or other compensation for the use of such facilities, which exempts the said owner ... from liability for damages caused by or resulting from the negligence of the owner ... shall be deemed to be void as against public policy and wholly unenforceable." New York case law indicates that "places of recreation" includes places in which equine activities are conducted.²⁹ **As such, pursuant to statute, negligence waivers will not be upheld in the context of equine activities.**

North Carolina: In 2005, The Court of Appeals of North Carolina directly addressed the issue of liability waivers in the context of equine activities.³⁰ The Plaintiff was an instructor at Prancing Horse, a non-profit organization that provides instruction in horse-related activities to disabled riders. She was trampled by a horse and severely injured while attempting to assist a rider in mounting the horse. Plaintiff claimed that a fence

²⁷ *Dean v. John MacDonanld, dba Lee USA Speedway*, 147 N.H. 263 (2001).

²⁸ Decided July 17, 2006.

²⁹ *Brancati v. Bar-U-Farm, Inc.*, 183 A.D. 2d 1027, (1992).

³⁰ *Young v. Prancing Horse, Inc., et. al.* (January 26, 2005) Case No. O. COA04-72.

constructed by the organization prevented her from escaping the arena and avoiding injury. Defendants asserted that even if Plaintiff could prove negligence, she was barred from recovery by the negligence waiver she had signed in which she released Prancing Horse from any and all injuries she incurred while participating in activities at Prancing Horse. The Court ruled in favor of Defendants, holding that parties to a contract are free to waive their claims for negligence, so long as such waivers are not against public policy. Here, Plaintiff had signed the release freely and voluntarily. It was a valid release, despite the fact that it did not contain the specific word "negligence." Though this case involves an instructor and not a participant, it is certainly indicative of North Carolina's general stance on exculpatory clauses: they will be upheld unless they are against public policy. And, at least in this case, clauses exonerating equine activity sponsors from liability are not void against public policy.

Ohio: Ohio courts have held that waivers of negligence are generally enforceable in the context of recreational activities, though operators cannot waive liability for wanton or willful (severe) negligence.³¹ Recreational activities have been defined to include equine activities. In addition, as in other states, the language purporting to release a sponsor or operator from liability must be crystal clear. If there is even a hint of confusion or ambiguity in the release language, the release will not be enforced.

Oklahoma: The Supreme Court of Oklahoma has addressed the specific issue of liability waivers in the context of recreational horseback riding. Plaintiff in *Schmidt v. The United States of America*³² was injured when a "ride leader" employed by Artillery Hunt Riding Stables frightened her horse, causing it to throw her to the ground and then fall on her. Before riding the horse, Plaintiff has signed a Rental Riding Agreement releasing the Center from "any liabilities or claims arising from my participation***I agree that I will never prosecute for***any loss, damage or injury to my person or property that may occur from any cause whatsoever as a result of taking part in this activity."

In evaluating the validity of such exculpatory clauses, the *Schmidt* Court applied a number of factors: "(1) their language must evidence a *clear and unambiguous* intent to exonerate the would-be defendant from liability for the sought-to-be-recovered damages; (2) at the time the contract (containing the clause) was executed there must have been *no vast difference* in bargaining power between the parties; and (3) enforcement of these clauses must never (a) be injurious to public health, public morals or confidence in administration of the law or (b) so undermine the security of individual rights vis-à-vis personal safety or private property as to *violate public policy*." In turn, a contract violates public policy under Oklahoma law if, "1) [it] patently would tend to injure public morals, public health or confidence in the administration of the law or (2) [it] would destroy the security of individuals' rights to personal safety or private property."

Thus, while such exculpatory clauses are generally "distasteful to the law," Oklahoma courts will uphold them, according to *Schmidt*, so long as the waiver clearly and cogently "(1) demonstrates an intent to relieve *that person* from fault and (2) describes

³¹ *Thompson v. Otterbein College*, 1996 Ohio App. LEXIS 389, Franklin County App., unreported.

³² *Schmidt v. the United States of America* (1996) 1996 OK 29.

the nature and extent of damage from which that party seeks to be relieved***In short both the identity of the tortfeasor to be released and the nature of the wrongful act--for which liability is sought to be imposed--must have been foreseen by, and fall fairly within the contemplation of, the parties. The clause must also identify the type and extent of damages covered---including those to occur *in the future*."

[NOTE: Since IEA relies upon both the waiver and indemnity provisions of its applications and IEA can only provide it's competitions if the participants and their parents sign legally enforceable liability waivers including death claims, the Board of Directors of IEA on 2/13/08 voted to not accept any membership applications from prospective members who reside in Oklahoma.]

Pennsylvania: Pennsylvania upholds waivers in the context of recreational equine activities because such activities do not involve a duty of public service.³³ Again, however, liability for willful conduct cannot be waived and the language of the negligence waiver must be clear. (Note: In Pennsylvania, a release purporting to release an operator from "all liability" is sufficient to indicate intent to release the operator from negligence claims).

Rhode Island: The Supreme Court of Rhode Island has, on a number of occasions, upheld exculpatory-indemnification clauses that disclaim liability for one's own negligence, so long as the clause is sufficiently specific.³⁴ Pursuant to Rhode Island case law, contracts indemnifying the indemnitee for its own negligence must be "clear and unequivocal." Where the contractual language is clear and unambiguous, and the parties to the contract dealt at arm's length, Rhode Island Courts will uphold exculpatory clauses limiting liability for a party's own negligence.

South Carolina: South Carolina appellate courts have upheld exculpatory agreements for simple negligence in the context of inherently dangerous activities. See, for example, *McCune v. Myrtle Beach Indoor Shooting Range* (2005), 364 S.C. 242, where an appellate court affirmed summary judgment in favor of defendant after a paintball participant signed a waiver of all claims resulting from injury, even injury caused by defendants' negligence. So long as the waiver contains explicit language clearly indicating the intent of the parties to waive liability for negligence, such exculpatory agreements are enforceable. *South Carolina Elec. & Gas Co. v. Combustion Eng'g, Inc.* (1984), 283 S.C. 182, 191.

Tennessee: Tennessee upholds exculpatory agreements for simple negligence, but not gross, or severe, negligence.³⁵ Tennessee courts refuse to uphold such agreements only when the operator is providing a public service subject to regulation or licensure requirements by statute. Tennessee courts uphold clear, unambiguous negligence waivers in the context of recreational activities.³⁶

³³ *Dohm v. Ponderosa Riding Stables, Inc.*, 41 Pa. D. & C. 2d 307, (1966).

³⁴ *Rhode Island Hospital Trust National Bank v. Dudley Service Corp.* (1992) 605 A. 2d 1325; *Corrente v. Conforti & Eisele Co.* (1983) 468 A. 2d 920.

³⁵ *Adams v. Roark*, 686 S.W. 2d 73, (1985).

³⁶ *Empress Health and Beauty Spa, Inc. v. Turner*, 503 S.W. 2d 188, (1972).

Texas: Texas law has far more liberal requirements for exculpatory clauses than most states. For example, appellate courts have upheld exculpatory clauses that purport to release indemnitees from "any claims," even where the clause does not specifically state that "any claims" includes claims for the indemnitee's own negligence. *Winkler v. Kirkwood Atrium Office Park* (1991) 816 S.W. 2d 111; *Fenn v. Estate of S.B. Burnett*, (1966) 405 S.W. 2d 161 (holding that, "Contracts written or construed so as to allow indemnity for liability arising from the indemnitee's own negligence are not violative of public policy. While the intent to indemnify against the results of the indemnitee's negligence must be clear, it need not be expressed." citations omitted). Despite the liberal requirements espoused in Texas law, the best policy is still to clearly and explicitly inform the indemnitor that the exculpatory clause applies to negligence claims specifically.

Utah: According to a recent Utah Supreme Court Decision³⁷, Utah law does not give a parent the authority to release a child's claims before or after an injury, without court order. The Utah Supreme Court also found that public policy renders void any indemnity agreement with the parent. By shifting financial responsibility to a minor's parent, such indemnity provisions would allow negligent parties to circumvent the rule voiding waivers signed on behalf of a minor. Thus, both indemnity and waiver of liability provisions of an equine release form signed by the parent of a minor are invalid and unenforceable.

[NOTE: Since IEA relies upon both the waiver and indemnity provisions of its applications and IEA can only provide it's competitions if the participants and their parents sign legally enforceable liability waivers, the Board of Directors of IEA on 2/13/08 voted to not accept any membership applications from prospective members who reside in Utah.]

Vermont: Vermont courts do not *carte blanche* render waivers unenforceable, rather they evaluate each waiver on a case by case basis considering all the facts and circumstances of the case, as well as societal expectations. Most importantly, Vermont courts have held that, "Whether or not defendants provide an essential public service does not resolve the public policy question in the recreational sports context."³⁸ Accordingly, Vermont evaluates waivers in much the same way as Connecticut pursuant to its recent Supreme Court ruling (see analysis of Connecticut case law above). ***If the operator has "care and control" of the premises and equipment, and is in the best position to guard against negligence, waivers will not be enforced.***

Virginia: ***Virginia courts do not enforce waivers of negligence in any context.*** Waivers limiting an operator's liability for personal injury claims are always against public policy and are never enforceable.³⁹

Limited Liability and Minors:

³⁷ *Hawkins v. Peart* 37 P.3d 1062. 2001 UT 94 (2001)

³⁸ *Dalury v. Killington, Ltd.*, 164 Vt. 329 (1995).

³⁹ *Hiatt v. Lake Barcroft Community Assoc. Inc.*, 244 Va. 191 (1992).

When dealing with limiting liability for injuries incurred by children under the age of 18, any release form signed by a minor is basically without merit. This is because children are not viewed by the law as having the legal capacity or maturity to be able to contract their rights away. For this reason, any liability release form **MUST** always be signed by the parent or legal guardian and should state that the parent or guardian agrees to indemnify the party from any lawsuit brought as a result of the child's injury. Children are covered under the statutes of most states, but as a precaution, any written contract that is prepared in reference to a particular state's statute must be also signed by the parent or guardian.

Conclusion:

The fact that most, if not all, states treat lawsuits for alleged negligent activity on a factual, case-by-case basis, it makes preparing a waiver or release that guarantees absolute immunity from all legal Claims impossible. However, by having an understanding of what each state believes is an inherent risk of or intrinsic danger associated with horseback riding or how these states have dealt with other "assumption of the risk" cases can provide, to the extent possible, a framework for an effective waiver or release of liability.

We cannot stress enough the necessity of having procedures in effect that carefully (even painstakingly slow and elementary) walks each rider participant and his/her parent or legal guardian through these inherent risks and having each of the parties involved sign a form indicating that this step was undertaken. For extra precautions, we would also recommend having a packet of this type of legal information available for each of your event sponsors and a written form that each sponsor and event coordinator signs indicating they were educated about the legal status of equine activity liability in their respective state(s).

We also strongly urge that event sponsors and coaches thoroughly familiarize themselves with the laws of their particular state and the states in which they will compete, including obtaining independent legal opinions on these issues. This legal memorandum is not intended to be a substitute for receiving direct legal advice and opinions from local counsel, but is merely a general summary of legal issues to be considered. *This memorandum is not intended to be and should not be relied upon as specific legal advice to any particular event sponsor, event coordinator, team, rider, member, parent, guardian, coach or other person or organization affiliated with IEA.*

We ask that all Board and IEA members regularly and periodically (twice per year) review this memorandum, and the Waiver of Liability and Indemnity Form, review the list of risks and provide feedback about any further risks or precautions that are not included on the form. Also, as new members join IEA in states not listed, please inform legal counsel so that this memorandum can be periodically updated.