

EQUINE LIABILITY RELEASES – HOW TO PROTECT YOURSELF

By Matt Berner, Esq.

Question: I want to start a riding facility on my property, but I want to protect myself against being sued when someone riding on my property or riding one of my horses falls off or is otherwise injured. Can you talk about liability releases for riding facilities?

It goes without saying that any horse (even miniature ones) can pose a significant risk of bodily injury to those on or around the horse, and that someone who is seriously injured in a horse-related incident may have little choice but to commence a lawsuit just to pay for medical expenses and lost wages – not to mention recovering compensation for permanent physical injuries or disability among other damages. Many riding facilities attempt to reduce the risk of bearing these costs by requiring their boarders and riders to sign liability releases (also referred to as waivers, hold harmless agreements, etc.) that relieve them from having to pay for such damages in the event someone is injured at the facility. While such a liability release will not prevent you from being sued, it certainly might prevent you from having to pay for the injured rider's damages.

One of the most common mistakes riding facilities make in using a particular liability release is their assumption that any "form" will "work" for its particular situation. Oftentimes, people will simply print off liability releases they find on the Internet, believing "if it works for them, it will certainly work for me." Of course, this line of reasoning assumes the form in question would actually be enforceable in the first place. The laws governing the requirements and enforceability of liability releases can vary significantly from state to state such that an enforceable liability release in one state may be deemed unenforceable in another state. Because it is usually only after an injury occurs and suit is commenced that the enforceability of a particular liability release is put to the test, it is important for those drafting such agreements to carefully consider the particular state's law controlling these agreements in similar situations.

For example, in Hanson v. Bieloh, the Minnesota Court of Appeals recently affirmed the District Court's dismissal of a rider's lawsuit for personal injuries sustained after falling from a horse owned by the defendants. Basing its decision on the "exculpatory language" contained in the defendants' "Horse Rental Agreement and Liability Release" and the Court's holding in Beehner v. Cragun Corp., the Hanson Court determined the rider had released the defendants from all liability for her injuries arising from their alleged negligence (*i.e.*, failing to act as a reasonably prudent would have acted under the same or similar circumstances).

After signing the liability release, but before mounting the horse, the rider in Hanson noticed that the horse was "kicking and moving from side to side." The defendants' employee told the rider that "the horse was safe," and directed her "to get on the horse" assuring her that "she had nothing to worry about." While sitting on the horse, another horse was brought behind

her. Thereafter, the rider's horse "began stamping its feet, swaying from side to side and kicking," causing her to fall.

Per the defendants' liability release, the rider in Hanson had agreed to release the defendants from liability caused by their "ordinary negligence," and further agreed not to sue them for any injury or other damages except for those caused by their "gross negligence and willful and wanton misconduct." Under Minnesota law, such "exculpatory clauses" are unenforceable if they are "ambiguous in scope" or release liability for "intentional, willful, or wanton acts," a "disparity of bargaining power" existed between the parties, or the service provided "is either a public or an essential service." In Beehner v. Cragun Corp., the Court determined that an exculpatory agreement releasing a horseback riding operator from liability for ordinary negligence was enforceable in the event of a rider's negligence claim where the rider was injured after being thrown from a horse. Since the exculpatory language in Hanson was nearly identical to that addressed in Beehner, the Minnesota Court of Appeals determined that the rider's negligence claims against the defendants were barred.

In Beehner, the rider's saddle girth loosened during her ride, causing her saddle to slip. While leaning against a tree for support and calling for assistance, a dog spooked her horse, which caused her to fall. In that case, the Court determined the rider had presented sufficient evidence to create a material issue of fact regarding whether the defendants' conduct in permitting the dog to accompany the riders on the trail constituted gross negligence (*i.e.*, acting without any regard for the consequences, or simply exercising no care whatsoever, under the circumstances) or willful misconduct and thus not barred by the liability release. In Hanson, the rider also argued that the defendants were grossly negligent such that the liability release would not bar her claims. The rider contended that this particular horse was "prone to kicking" and "bossy" such that the defendants should not have let her ride the horse. The Hanson Court ultimately concluded the rider had failed to present sufficient evidence demonstrating that defendants' horse had a reputation as a "kicker" or was a "risky animal" such that their permitting her to ride that horse constituted gross negligence or willful misconduct.

Although it is an unpublished decision, the Minnesota Court of Appeals' holding in Hanson v. Bieloh affirms the general principal that a carefully crafted liability release can limit liability for negligence under Minnesota law, but that damages arising from gross negligence or intentional misconduct might not be avoided by such a liability release. Unfortunately, there really is no "one-size-fits-all" liability release which is guaranteed to "work" in every state in every situation. It is wise to exercise an abundance of caution before using a "form" liability release, and always a good idea to consult with your attorney regarding the requirements and enforceability of liability releases in your particular state and situation.