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# CAN MY LIABILITY PROTECTION UNDER THE EQUINE ACT DIFFER FROM STATE TO STATE?


**Yes it can.** The liability protections provided by the Equine Activity Liability Act may differ depending on what State's law applies. A recent case decided in Michigan demonstrates how the same facts may be analyzed differently by the court depending on where it is filed.

The Illinois Equine Activity Liability Act provides five exceptions to the liability protections which include injuries caused by: faulty tack, the mismatch of horse and rider, a dangerous latent condition of land, willful and wanton disregard for safety, and intentionally caused harm.

In Michigan, the first three Equine Activity Liability Act exceptions are essentially the same, but there is no willful and wanton or intentional harm exception. Instead, the exception that says there is no liability protection where the injury is caused by the commission of "a negligent act or omission that constitutes a proximate cause of the injury, death, or damage." This exception paved the way for an individual in Michigan to file a lawsuit alleging that his injuries resulted from Defendant's negligence, despite the language of the Act protecting professionals from negligence claims. Therefore, the court had to decide whether or not the exception under the Michigan Equine Activity Liability Act allowed for a general negligence claim or only a negligence claim where the injury alleged arises outside the inherent risks of equine activities.

**Here are the facts of the case:**

Plaintiff and Defendant were neighbors in Michigan and Defendant was a professional horse person. On prior occasions, Defendant invited Plaintiff over to his property to exercise a few of the horses. In May of 2004, Plaintiff went to Defendant's property to ride a horse named Whiskey. Defendant knew that Whiskey was "green broke." Defendant clipped the lead rope to Whiskey's halter and, according to Plaintiff, Defendant asked her to hold the lead while he went to gather the saddle and other tack. When Defendant attempted to throw the saddle on Whiskey, the horse reared and Plaintiff was pulled into the air and injured.

Defendant argued that the Michigan Equine Activity Liability Act barred Plaintiff's claim. The Act states, in relevant part, that:

> Except as otherwise provided in Section 5, a...equine professional,...is not liable for an injury to...a participant...resulting from an inherent risk of an equine activity. Except as otherwise provided in Section 5, a participant or participant's representative shall not make a claim for, or recover, civil damages from an...equine professional...for injury to or the death of the participant or property damage resulting from an inherent risk of an equine activity."

Plaintiff argued that she had produced evidence supporting her claim under the Act's exception which allows claims for injuries resulting from the commission of "a negligent act or omission that constitutes a proximate cause of the injury, death, or damage." The court agreed with Defendant and ruled that Plaintiff's claim was barred by the Act. The court's explanation stated:

> The statute recognizes that an equine may behave in a way that will result in injury and that equines may have unpredictable reactions to diverse circumstances, precisely one of the guiding motivations of the limited liability for equine professionals. Because there is no evidence indicating that Whiskey's behavior...represented anything other than unpredictable action to a person or unfamiliar object, pursuant to the statute, Plaintiff's argument in this case is without merit...the purposes of the EALA is to curb litigation against the equine industry and the correlative rising costs of liability insurance, and to stem the exodus of public stable operators from the equine industry.

After a review of the evidence, the court found that Plaintiff had failed to establish that her injury resulted from activity outside that of engaging in an inherently risky equine activity. The further explained that instances in which liability attaches

under the Act's exceptions involve human error not integral to engaging in an equine activity, such as failure to inspect tack, failure to inquire into a participant's level of ability relative to the horse's level, and failure to warn of dangerous latent conditions in the land.

In this case, Plaintiff was engaged in inherently risky equine activity. When Defendant hoisted the saddle into the air, the horse spooked and reared up on its hind legs, resulting in an injury to Plaintiff. This is exactly the type of risk that is integral to any equine activity. In other words, Whiskey had an "unpredictable reaction" to Defendant's attempt to saddle him while Plaintiff was engaging in an equine activity. The court concluded that Plaintiff's complaint failed to support a negligence claim that meets the requirements of the Act's exceptions, namely that there must be some type of negligence involving something other than "inherently risky equine activity."

If this case were brought in Illinois, the court's analysis may be different. As stated above, there is no exception, like that in Michigan, stating that the liability protections are lost when the injury is caused by a negligent act constituting a proximate cause of the injury. The liability protection in Illinois is lost where someone commits an act or omission constituting willful and wanton disregard for a participant's safety causing him or her injury. The court would therefore have to decide, among other things, whether hoisting the saddle up on the horse causing it to spook and injure the Plaintiff was an act or omission that constitutes willful or wanton disregard for the safety of the Plaintiff. This is arguably a more difficult standard for the Plaintiff to meet than the Michigan negligence standard described above.

As described in this brief report, it is important to analyze the facts of each incident on a case-by-case basis and under the specific State's Equine Activity Liability Act, or any other statute that might apply. If you have any questions regarding a particular situation, please contact the author for a consultation on your specific facts and the applicable law.

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