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Available at: https://uknowledge.uky.edu/klj/vol83/iss1/4
The Equine Activity Liability Acts: A Discussion of Those in Existence and Suggestions for a Model Act

BY KRYSTYNA M. CARMEL*

INTRODUCTION

"Equine Activity Liability Act" ("EALA")1 is a title commonly given to the type of statute which seeks to protect equine professionals from liability by eliminating the risk of lawsuits for injuries arising out of the inherent dangers associated with activities involving horses. Provisions in these statutes are intended to benefit the horse industry by making it more profitable and insurable through limited liability.

EALAs have arisen in the wake of state legislatures' recognition of the inherent risks associated with equine activities, as well as the economic and personal benefits which the state and its citizens derive from such activities. Therefore, the purpose underlying EALAs is to encourage equine activities by limiting the civil liability of those involved in such activities, in light of the reality that rising insurance costs and increased litigation would put many equine professionals and equine facilities out of business. At last count, forty-four states have either passed2 or considered3 such legislation.

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1 Although many states do not use the exact title "EALA," this title will be used throughout this discussion for convenience.
3 The following 15 states have considered EALA legislation: California, A.B. 3084,
Part I begins this study of EALAs with a sampling of the common law relating to the liability issues which arise from the inherent risks of equine activities. Part II examines the text of the statutes themselves, with an introduction to the typical provisions and the different types of EALAs which have been passed to date. While the essence of the EALAs is similar, the forms taken are not. Some are extremely detailed, others are “bare-boned,” and still others address recreational activities with only passing reference to horseback riding. Part III examines EALAs in action: how they have been interpreted by the courts, how they have helped to resolve matters in arbitration, and how they have affected the insurability of the horse industry. Part IV proposes an effective and comprehensive model EALA.

I. COMMON LAW LIABILITY ISSUES STEMMING FROM INJURIES WHICH ARISE FROM THE INHERENT RISKS OF EQUINE ACTIVITIES

As discussed in the Introduction, EALAs intend to protect the viability of the horse industry by eliminating the potential liability of equine professionals in situations where injury results from the inherent risks or dangers arising from equine activities. While EALAs are


4 See infra pp. 2-15.
5 See infra pp. 15-23.
6 See infra pp. 23-30.
7 See infra pp. 30-40.
designed to make the horse industry more insurable and profitable in the face of rising insurance costs and increased litigation, they do not immunize the equine professional from the most common ground of liability, namely ordinary negligence. This part examines a variety of cases which arose under common law and discusses how the outcome of these types of cases might be affected were they to arise under an EALA.\(^8\)

A. Where EALAs Do Not Apply

Since EALAs only apply to injuries resulting from the “inherent risks arising from equine activities,”\(^9\) it is important to note that EALAs are explicitly inapplicable to certain situations. For example, several states have specifically excluded the racing industry from the protections offered by an EALA.\(^10\) Also, EALAs by definition apply only to incidents involving someone engaged in an equine activity. Accordingly, cases involving the “vicious propensity” of a horse to bite or to kick someone not engaged in some form of equine activity will continue to be litigated under the common law, completely unaffected by enactment of an EALA. There is an abundance of cases involving people of all sizes and ages getting bitten or kicked by horses with which they have come into contact in a purely passive or accidental fashion: such as by attempting to pet the unattended horse in a pasture,\(^11\) accidentally finding themselves in the pasture with the horse,\(^12\) or coming across an unrestrained horse outside of its pasture.\(^13\) Since such persons would not fall into the class of being a “participant,”\(^14\) their cause of action would in no way be affected by the existence of an EALA, but would arise under common law.

Another area of abundant litigation concerns matters in which loose horses cause property damage.\(^15\) A frequently litigated issue in this area involves injuries and property damage arising from collisions between

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\(^8\) Part III examines cases arising under EALAs.

\(^9\) *E.g.*, MASS. GEN. LAWS ANN. ch. 128, § 2D (West Supp. 1994).


\(^12\) *E.g.*, Hofer v. Meyer, 295 N.W.2d 333 (S.D. 1980).

\(^13\) *E.g.*, Hulen v. City of Hermiston, 569 P.2d 665 (Or. 1977).

\(^14\) See, e.g., UTAH CODE ANN. § 78-27b-101(5) (“Participant means any person, whether amateur or professional, who directly engages in an equine activity, regardless of whether a fee has been paid to participate.”).

\(^15\) *E.g.*, Lollar v. Poe, 622 So. 2d 902 (Ala. 1993).
EALAs do not protect a horse owner from liability in such situations.

In some states, strict liability may be imposed under a state animal control act upon an owner of any animal other than a horse. Furthermore, strict liability for damage caused by a horse's dangerous propensity is not affected by EALAs, even where the incident involves an equine activity. For example, strict liability is frequently applied to owners of horses where a participant's injury is the result of a vicious or dangerous propensity of the animal of which the owner was aware. The plaintiff, however, has the burden of proving not only that the defendant knew of the alleged dangerous propensity, but also that the propensity which caused the injury was actually vicious or dangerous.

B. Assumption of Risk

In Louisiana, the common law rule regarding strict liability states that where a horse "harms another, the master of the animal is presumed to be at fault. The fault so provided is in the nature of strict liability, as an exception to or in addition to any ground of recovery on the basis of negligence." Louisiana recognizes three possible exculpating defenses in such a strict liability case: "the owner may exculpate himself by showing that the harm was caused [1] by the fault of the victim, [2] by the fault of a third person for whom he is not responsible, or [3] by a fortuitous event." Here, EALAs provide assistance to the equine professional by complementing the common law. The EALA definition of "inherent risk" possibly clarifies the situations which may fall into the category of "fortuitous events" outside the control of the owner. Thus, the owner may escape liability.

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17 See, e.g., Harris v. Walker, 519 N.E.2d 917, 919 (Ill. 1988) (explaining that the strict liability imposed by the Illinois Animal Control Act does not apply to a person who rents a horse from another when that person understands and accepts the risks involved).
18 Kaplan v. C Lazy U Ranch, 615 F. Supp. 234, 237 (D. Colo. 1985) (holding that the habit of a horse to expand its chest while being saddled, causing the saddle to remain dangerously loose, is not a dangerous propensity for which the owner will be held strictly liable); W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 76 (5th ed. 1984).
19 Kaplan, 615 F. Supp. at 237.
20 Daniel v. Cambridge Mut. Fire Ins. Co., 368 So. 2d 810, 813 (La. Ct. App. 1979) (holding that the horse owners would generally be strictly liable for injury caused by the horse except where injury was due to the rider's assumption of risk).
21 Id.
The defense of assumption of risk emanates from the first defense in strict liability cases, that the harm was caused by the fault of the victim. Basically, assumption of risk means that the plaintiff knowingly encountered a risk. If that risk is unreasonable because the danger involved outweighs the benefits of the encounter, then the plaintiff’s conduct is considered to be contributorily negligent. This defense frequently arises in cases involving equine activities. The theory behind the assumption of risk defense is that a plaintiff “who with full knowledge and appreciation of the danger voluntarily exposes himself to the risk and embraces the danger cannot recover damages for injury which may occur.” In horseback riding cases, particularly in Louisiana, the victim is said to be as much at fault for engaging in the activity as the owner of the horse is for allowing the activity to occur. The application of this principle often results in a finding for the defendant, with the plaintiff deemed to have assumed the risk of injury merely by voluntarily engaging in the activity.

The policy of strict liability, which mandates that the risk-creator rather than the victim bear the burden of the responsibility, creates a dilemma peculiar to equine activity cases in that the “victim” is normally not an innocent bystander, but an active participant. In fact, in most cases, the “victim” actually had control of the animal. In an effort to resolve this type of situation, courts in a few states “have recognized the principle that persons who participate in [sporting] activities assume the risks inherent in such activities.” An Illinois appellate court went a step further in Ennen v. White, in which an experienced rider, after sustaining injuries from a fall from a bucking horse, sued the animal’s owner for

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21 See KEETON ET AL., supra note 18, § 68.
22 Id.
23 See, e.g., Daniel, 368 So. 2d at 814.
24 Id.; see Ordway v. Superior Court, 243 Cal. Rptr. 536 (Ct. App. 1988) (holding that jockey who had been thrown from his horse during a race had assumed the risk of injury).
25 See Daniel, 368 So. 2d at 814.
27 E.g., Alfonso, 356 So. 2d at 89.
28 Daniel, 368 So. 2d at 815; see Bourque v. Duplechin, 331 So. 2d 40, 42 (La. Ct. App. 1976) (holding the plaintiff did not assume the risk of the defendant playing softball in an unsportsmanlike manner which resulted in injury to the plaintiff); Mounts v. Knodel, 730 P.2d 594, 595 (Or. Ct. App. 1986) (refusing to find the owner of a horse negligent for not repairing a stirrup which caused injury to the rider).
negligence. The court, in holding that the plaintiff had assumed the risk of injury when she took control of the horse as a rider on its back, explained that

plaintiff should have recognized her conduct involved a risk, she should have known the qualities and habits of animals, and capacities of things and forces insofar as they are matters of common knowledge in the community. This applies even if she was ignorant of the possibility [the horse] might throw her.

The court concluded that recovery under the common law negligence theory was not possible absent a showing that the defendants had known of the horse’s predisposition to buck.

California’s law regarding assumption of risk has been in a state of confusion and “misinterpreted since the decision in Li v. Yellow Cab Company.” However, in 1993, the California Court of Appeal issued two decisions defining the assumption of risk issue in the context of equine activities: Galardi v. Seahorse Riding Club and Harrold v. Rolling “J” Ranch.

In Galardi, the court ruled that a complaint alleging the negligence of a coach or instructor during training involved conduct for which no absolute defense of assumption of the risk existed. Rather than allow application of this doctrine to defeat the plaintiff’s claim, the court held

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31 598 N.E.2d 416, 417 (Ill. App. Ct. 1992) (holding the owner not liable because the rider had assumed the risk).
32 Id. at 419; see RESTATEMENT (SECOND) OF TORTS § 290 cmt. g (1965). Other courts have followed the reasoning of both Ennen and the Restatement. See, e.g., Swierkosz v. Starved Rock Stables, 607 N.E.2d 280, 282 (Ill. App. Ct. 1993) (citing to Ennen’s treatment of RESTATEMENT (SECOND) OF TORTS § 290 cmt. g (1965) to conclude a rider thrown from a horse had failed to state a cause of action against the stable owner under the Illinois Animal Control Act).
33 Ennen, 598 N.E.2d at 419.
34 Galardi v. Seahorse Riding Club, 20 Cal. Rptr. 2d 270, 273 (Ct. App. 1993). In Li v. Yellow Cab Co., 532 P.2d 1226 (1975), the contributory negligence doctrine was abrogated and replaced with the doctrine of comparative negligence.
35 Galardi, 20 Cal. Rptr. 2d at 273 (holding secondary assumption of risk was not a complete bar to recovery where a trainer owed a duty of care to a horse rider who fell during practice).
36 23 Cal. Rptr. 2d 671, 674-75 (Ct. App. 1993) (holding a stable owner had no duty to warn customer-rider of the possibility that a horse may “spook,” where the rider’s participation constituted primary assumption of risk and thus served as a complete bar to recovery).
37 20 Cal. Rptr. 2d at 275.
that a jury must evaluate the relative fault of both parties under the doctrine of comparative fault. Relying on the California Supreme Court's decision in *Knight v. Jewett*, the court reversed the trial court's grant of summary judgment in the trainer's favor and sent the case back with instructions to try the case along comparative fault, rather than assumption of risk, principles.

*Galardi* arose out of an incident in which the plaintiff, an experienced horsewoman, fell from her horse and was injured during a riding lesson. The plaintiff filed a suit against her trainer and the riding club where the incident occurred and alleged "general negligence and premises liability." The plaintiff claimed that while she practiced jump combinations, her instructor altered the course by increasing the height of the jumps without proportionately increasing the distance between such jumps. After jumping over the first fence of the combination, her horse landed too close to the second fence, and "popped" it. The plaintiff suffered injuries to her coccyx and two vertebrae.

The trial court in *Galardi*, which first heard the case in 1991, granted summary judgment for the defendants on the theory of assumption of risk. Over a year later, in light of that court's 1992 decision in *Knight v. Jewett*, the plaintiff petitioned the California Supreme Court for review. In *Knight*, the California Supreme Court clarified the doctrine of assumption of risk and stated that the doctrine only barred recovery in cases of "primary assumption of risk." Basing its decision on the "analytical framework established by the [Knight opinion]," the court

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34 *Id.* at 274.
39 834 P.2d 696 (Cal. 1992) (holding a reckless participant in a touch-football game breached no duty where primary assumption of risk barred the plaintiff's claim).
40 *Galardi*, 20 Cal. Rptr. 2d at 275.
41 *Id.* at 271.
42 *Id.*
43 *Id.* at 272.
44 *Id.*
45 *Id.*
47 *Galardi*, 20 Cal. Rptr. 2d at 274. The court noted that it must look then both to the nature of the sport and to the roles and relationship of the parties. Clearly, the sport of horse jumping has the inherent risk that both horse and rider will fall and suffer injury. The basic competitive character of the sport involves engaging increasingly higher jumps and at shorter intervals until at some point the competitors can no longer clear the obstacles without substantial contact. Collisions with the jumps and ensuing falls are thus an integral part of the sport. . . . Such risks were clearly among those which plaintiff here knowingly encountered during her training.

*Id.*
of appeal in *Galardi* explained that “primary assumption of risk cases are those in which the defendant has no duty to protect the plaintiff from a particular risk.” The court of appeal noted that secondary assumption of risk occurs where “the defendant does owe a duty of care to the plaintiff and has some liability even though the plaintiff knowingly encounters a risk of injury caused by the defendant’s breach of that duty.” According to the court of appeal, “[T]he general rule is that coaches and instructors owe a duty of care to their charges.” Thus, the conduct of the student rider could only be classified as “secondary,” and not “primary,” assumption of risk. Applying *Knight*, the court of appeal in *Galardi* held that the motion for summary judgment should have been denied. The court explained that the duty of the defendants was to use due care not to increase the inherent risks of injury associated with the sport.

In *Harrold v. Rolling “J” Ranch*, the California Court of Appeal held that a commercial riding stable owed no duty to supply its customers with an “ideal” horse, or to warn the rider of the horse’s one prior spooking incident. The court concluded that under the circumstances of the case the doctrine of primary assumption of risk barred the plaintiff’s recovery as a matter of law.

The plaintiff in *Harrold* was a member of a resort which offered horseback riding to members at a nearby stable. The resort arranged to transport the plaintiff and other resort members to the stable, where they were given their choice of horses. Before embarking on the ride, the riders were instructed on how to signal and to command the horses and were advised not to run the horses. The group was escorted by two wranglers, one leading the group, and one following from behind. About twenty to thirty minutes into the ride, the plaintiff, who had previously experienced no problems with her horse while on the ride,

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48 Id. at 273.
49 Id.
50 Id. at 275.
51 Id.
52 Id.
53 Id. at 273.
54 23 Cal. Rptr. 2d 671, 677 (Ct. App. 1993).
55 Id.
56 Id. at 672.
57 Id.
58 Id. at 672-73.
59 Id. at 672.
wrapped the reins around the saddle horn while proceeding to remove her jacket.\textsuperscript{60} While both of the plaintiff's arms were still in the sleeves of her jacket and caught behind her, the horse spooked and bucked, causing the plaintiff to fall off the horse and land on her tailbone.\textsuperscript{61}

Unknown to the plaintiff, her horse had spooked and thrown a previous rider when that rider had taken off and waved a hat.\textsuperscript{62} Stable officials had not warned the plaintiff of this prior incident, nor, according to the court, "did they retrain the horse to avoid the recurrence of a similar incident."\textsuperscript{63} The plaintiff brought suit against the stable, alleging that it had negligently failed to warn her of the "horse's unstable temperament and tendency to throw riders and had failed to provide her with a safe horse to ride."\textsuperscript{64} Evidence presented to the trial court on a motion for summary judgment indicated that the plaintiff had some prior experience with horses, and in a statement prepared for the stable following the accident, the plaintiff wrote: "I am an experienced rider and I understand that I was the second person thrown by the same horse. I guess even the best are thrown. . . . Accidents happen."\textsuperscript{65}

The case had been dismissed previously, but was remanded for consideration in light of \textit{Knight}.\textsuperscript{66} The court of appeal noted that only if it concluded that the defendant stable "owed no duty to the plaintiff does the implied assumption of the risk defense operate as a complete bar to the plaintiff's cause of action."\textsuperscript{67} However, if a duty was owed, then the plaintiff's reasonable or unreasonable assumption of the risk created by the defendant would be one of the factors considered with regard to the comparative negligence of the plaintiff.\textsuperscript{68}

In its decision, the court of appeal held that a commercial riding stable owed only a narrow duty of due care to members of the general public to whom it rented horses and that duty, in the instant case, had not been breached.\textsuperscript{69} The court noted that such a slight duty of care was

\textsuperscript{60}\textit{Id.} at 673.
\textsuperscript{61}\textit{Id.}
\textsuperscript{62}\textit{Id.}
\textsuperscript{63}\textit{Id.}
\textsuperscript{64}\textit{Id.}
\textsuperscript{65}\textit{Id.}
\textsuperscript{66}\textit{Id.} at 672.
\textsuperscript{67}\textit{Id.}
\textsuperscript{68}\textit{Id.}
\textsuperscript{69}\textit{Id.} at 675. The court stated:

There is no doubt horseback riding, even the rather tame sport of riding on the back of walking horses in an afternoon trail ride, carries some inherent risk of injury. A horse can stumble or rear or suddenly break into a gallop, any of
appropriate in light of the uncertain nature of horseback riding. To confirm its point, the court explained that "sudden movements of a horse [are] just as inherent in horseback riding as the presence of moguls on a ski slope are to skiers." As for the specific events in 

Harrol,

the court of appeal concluded that the one prior incident of spooking with the horse in question did not rise to the level of a dangerous propensity imposing upon the stable a duty to warn the plaintiff. The court stated that "to impose some sort of duty on a lessor of horses when a 'horse acts as a horse' is to tell the commercial world that strict liability is imposed for any action of a horse inherent to horseback riding."

Thus, in Californian terms, an EALA would be a codification of primary assumption of risk for equine activities. Nevertheless, these cases are a good example of the kind of increased litigation the horse industry has recently experienced in the wake of judicial confusion after the demise of the doctrine of assumption of risk.

C. EALAs and the Demise of the Doctrine of Assumption of Risk

EALAs which adopt an "inherent risk" format are essentially a codification of the common law concept which holds that in an activity involving horses, active participants cannot recover for injuries which result from the misbehavior of animals in their control, absent negligence on behalf of the provider of the animal. As such, EALAs are effective-

which may throw the rider. But this does not necessarily mean the commercial operator of the horse riding facility owes no duty of care to those who rent its horses and can never be liable for injuries suffered because a horse stumbles, rears, or suddenly breaks into a gallop. The commercial operator has a duty to supply horses which are not unduly dangerous. Furthermore, the operator owes the duty to warn the patrons renting a given horse if that horse has evidenced a predisposition to behave in ways which add to the ordinary risk of horse riding.

Id. at 676 (footnote omitted).

70 Id. at 677.

71 Id.

72 Id.

73 Id. In conclusion, the court held that it "did not impose on purveyors of horse rides a duty when a horse 'acts' as a horse, any more than [it] would impose a general duty on commercial small boat operators when a wave suddenly moves a boat causing a passenger to be unbalanced and injured." Id.

74 Compare Daniel v. Cambridge Mut. Fire Ins. Co., 368 So. 2d 810, 814 (La. Ct. App. 1979) (holding rider had assumed risk that horse might cause injury) with MASS. GEN. LAWS ANN. ch. 128, § 2D(6) (West Supp. 1994) (codifying the common law concept of "inherent risks" as related to certain conditions which are an integral part of
ly “remedial” legislation because they seek to remedy a flaw, or a gap, in the common law created by the demise of the doctrine of assumption of risk. The replacement of the assumption of risk doctrine with that of comparative negligence has resulted in more litigation for injuries related to equine activity. In the days when assumption of risk controlled, such litigation was often dismissed on the theory that one engaging in activities involving horses assumed the risk of injury when a horse “acts as a horse.” In any case, assumption of risk was a defense to common law actions alleging negligence.

Where assumption of risk has been abolished or clouded in the judicial system, EALAs put the “risk” concept back into the law by statute. The need for this change was evidenced by the rise in litigation involving injuries resulting from the inherent risks of equine activities, and the correspondingly enlarging hole in the law left by the decline of assumption of risk. The need for change in the common “equine” law could not wait for the slow processes of the judicial system. Legislators were spurred to action by strong lobbying from the horse and tourism industries.

Many states have either abolished or severely limited the use of the “assumption of risk” defense. For example, Oregon passed a law that expressly abolished assumption of risk, yet that state still recognizes the “inherent risk” concept as applied to sporting activities. However, the Oregon Court of Appeals has declared that the issue is not one of assumption of risk, but one of duty. In Mounts v. Knodel, the Oregon Court of Appeals, citing to the Oregon Supreme Court’s decision in Blair v. Mount Hood Meadows Development Corp., stated that in negligence

equine activity).

See 3 NORMAN J. SINGER, SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 60.02 (5th ed. 1992) (discussing the characteristics inherent in remedial statutes).


See KEeton et Al., supra note 18, § 68.

See, e.g., W. VA. CODE § 20-4-1 (Supp. 1994) (“The Legislature finds that equestrian activities are engaged in by a large number of citizens of West Virginia and that such activities also attract to West Virginia a large number of nonresidents, significantly contributing to the economy of West Virginia.”).

See KEeton et Al., supra note 18, § 68.


Id.

630 P.2d 827 (Or. 1981) (holding judgment for defendant ski facility operator where skier was injured in a fall), modified, 634 P.2d 241 (Or. 1981) (holding a skier is not an invitee if negligent).
cases involving injuries arising from the normal risks of a sport, the burden fell on the plaintiff to show that the defendant had breached a duty owed to the plaintiff and that such breach caused the injury.\textsuperscript{64} In \textit{Mounts}, the plaintiff was injured when he fell off his horse when the stirrup leather on his saddle broke.\textsuperscript{65} Evidence showed that the other stirrup leather on the same saddle had also recently broken, but that the provider of the horse to the plaintiff had failed to check the condition of both the stirrups before allowing the plaintiff to use the saddle.\textsuperscript{66} It is important to note that under an EALA, providing a participant with faulty equipment is a circumstance specifically not protected.\textsuperscript{67}

Thus, equine common law demonstrates an evolution from the strict liability defense of the "victim at fault" for assuming risk of injury through participation in the equine activity, where animals are unpredictable, to the "inherent risk" theory. While many states have either abolished or severely limited the use of the "assumption of risk" defense in favor of a theory of "comparative negligence,"\textsuperscript{68} states which no longer use the assumption of risk doctrine can equally adopt the "inherent risk" concept by approaching the matter from a duty perspective.\textsuperscript{69} While some state EALAs specifically place an "assumption of risk" on an equine activity participant, an EALA does not necessarily conflict with the law in states which have in some way rejected the assumption of risk defense; EALAs do not limit liability for injuries resulting from negligence.\textsuperscript{70} Where the EALA is limited to protecting the equine professional from liability arising from the inherent risks of equine activities, no conflict with comparative negligence law exists. No conflict occurs because "inherent risk" excludes negligence or intentional injury, and the issue of comparative negligence only arises where both parties are negligent to some degree.\textsuperscript{71} In either case, the common law inherent risk concept is generally amenable, and thus its use in EALAs is not in conflict with state common law, regardless of the status of assumption of risk in the jurisdiction.

\textsuperscript{64} \textit{Mounts}, 730 P.2d at 597.
\textsuperscript{65} \textit{Id.}, at 595.
\textsuperscript{66} \textit{Id.}
\textsuperscript{67} See, e.g., VA. CODE ANN. § 3.1-796.133 (Michie 1994) ("No provision of this chapter shall prevent or limit the liability of an equine activity sponsor or equine professional who . . . [k]nowingly provides faulty equipment or tack and such equipment or tack causes the injury or death of the participant.").
\textsuperscript{68} KEETON \textit{et al.}, supra note 18, § 68.
\textsuperscript{69} See \textit{Mounts}, 730 P.2d at 597.
\textsuperscript{70} E.g., MASS. GEN. LAWS ANN. ch. 128, § 2D(c) (West Supp. 1994).
\textsuperscript{71} KEETON \textit{et al.}, supra note 18, § 68.
D. Releases

One final but important area for discussion is the status of releases under the common law and EALAs. Research indicates a split in the cases involving pre-injury releases decisive to litigation of a case at common law: some are upheld, while others are held invalid. It is interesting to note that in cases where releases were upheld, injury generally resulted from the inherent risks of the activity, while negligence was usually implicated in the cases where the releases were held invalid.

EALAs will not alter the common law rule that a person may not exempt himself from liability from his own negligence, absent a clear intent to do

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82 See, e.g., Campbell v. Country Club Stables, Inc., 909 F.2d 1486, 1488 (7th Cir. 1990) (holding that language of a release was broad enough to include immunity for liability from negligence, even where negligence on the part of a riding stable was not specifically addressed, because the exculpatory agreement was not a contract of adhesion since the participant was under no compulsion to sign); Heil Valley Ranch, Inc. v. Simkin, 784 P.2d 781, 785 (Colo. 1989) (holding it reasonable to interpret the broad language of exculpatory agreement to cover claims based on negligence or breach of warranty, even when those exact terms were not used, since the agreement was written in simple and clear terms free from legal jargon); Hall v. Gardens Servs., Inc., 332 S.E.2d 3, 5 (Ga. Ct. App. 1985) (holding that exculpatory clauses in contracts were valid and binding and not void as against public policy where the bailor relieved himself from his own negligence, except where negligence amounted to willful and wanton misconduct); Lee v. Sun Valley Co., 695 P.2d 361, 364 (Idaho 1984) (upholding an exculpatory release where the plaintiff did not establish that the defendant riding stable failed to satisfy industry standard of care and explaining that where the legislature had granted limited liability to one group in exchange for adherence to specific duties, then such duties became a public duty and an exculpatory agreement could not be used to absolve the defendant from liability for possible violation of public duty, but could be used to absolve defendant from common law liabilities).

83 See, e.g., Hobby v. Giplin (Tenn. Ct. App. Jan. 23, 1984) (LEXIS, State library, Tenn. file) (holding that contract against liability will not operate to protect a party who is guilty of gross negligence); O'Connell v. Walt Disney World Co., 413 So. 2d 444, 446 (Fla. Dist. Ct. App. 1982) (holding that where a minor child was injured at Disney World by a stampede of horses, the term “negligence” must actually appear in the exculpatory agreement in order to protect the defendant from liability arising from the drafter's negligence); Merten v. Nathan, 321 N.W.2d 173, 178 (Wis. 1982) (holding an exculpatory agreement invalid where the party seeking its enforcement misstated a material fact concerning insurance coverage for equine activities by stating that such coverage was not available, when in fact it was); Tanker v. North Crest Equestrian Ctr., 621 N.E.2d 589, 591 (Ohio Ct. App. 1993) (holding that a riding facility was not immunized by an exculpatory agreement from its own negligence where only a portion of the agreement applicable to cases of negligence addressed the negligence of other students, riders, trainers, and boarders, and not that of the riding center's own trainers).

84 See, e.g., Heil Valley Ranch, Inc., 784 P.2d at 785; O'Connell, 413 So. 2d at 448.
Furthermore, waivers of liability exempting a person from his own negligence are generally disfavored and ruled invalid by the courts. Precedent in individual states may present barriers to the use of specific or pre-injury releases by equine professionals.

In one case following New York common law, Brancati v. Bar-U-Farm, Inc., the court held that a riding stable is of a “recreational” nature, and, as such, that a release between a recreational provider and a paying customer is invalid where it purports to protect the stable from its own negligence. The Brancati decision was based upon section 5-326 of New York’s General Obligations Law which deems such agreements void as against public policy. Thus, while New York does not have an EALA, passage of an EALA would not per se affect this precedent.

In Murphy v. North American River Runners, Inc., the Supreme Court of Appeals of West Virginia held that pre-injury releases for inherently dangerous recreational activities are unenforceable when they involve a violation of safety standards. The court in Murphy ruled that the Whitewater Responsibility Act statutorily imposed safety standards upon the industry which were “not within the power of any private individual...

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95 Restatement (Second) of Torts § 496B cmt. d (1965); Keeton et al., supra note 18, § 68.
96 See Jones v. Walt Disney World Co., 409 F. Supp. 526, 528 (W.D.N.Y. 1976) (invalidating exculpatory agreement in a personal injury case arising from a fall from a horse); Harris v. Walker, 519 N.E.2d 917, 919 (Ill. 1988) (holding animal control statute inapplicable when injuries were caused by a fall from a horse); 6A Arthur L. Corbin, Corbin on Contracts § 1472(E) (Supp. 1993).
98 583 N.Y.S.2d at 662-63.
99 Id. The text of § 5-326 is as follows:
Every covenant, agreement or understanding in or in connection with, or collateral to, any contract, membership application, ticket or 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 use of such facilities, pursuant to which such owner or operator receives a fee or other compensation for the use of such facilities, which exempts the said negligence of the owner, operator or person in charge of such establishment, or their agents, servants or employees, shall be deemed to be void as against public policy and wholly unenforceable.
100 412 S.E.2d at 509.
to waive." While *Murphy* dealt with West Virginia's Whitewater Responsibility Act, that Act is virtually identical to the state's Equestrian Activities Responsibility Act, which expressly defines "those areas of responsibility and those affirmative acts for which the operators of equestrian businesses shall be liable." A comparison of the language found in both statutes indicates that, in light of the analysis in *Murphy*, the Equestrian Activities Responsibility Act would also be considered a "safety statute" by the courts of West Virginia. The holding in *Murphy* illustrates the uselessness of liability releases for equine activities in West Virginia where the statutorily imposed standard of care is very broad and where a violation of the safety standards would demonstrate negligence on the part of the equine professional. In *Murphy*, the court stated that "when a statute imposes a standard of conduct, a clause in an agreement purporting to exempt a party from tort liability to a member of the protected class for the failure to conform to that statutory standard is unenforceable." This proposition is not a new one.

Accordingly, it seems that in most states an EALA will have no effect on the enforceability of liability releases. The common law of the state will govern the outcome of cases in this area. Probably the most effective release in a state with an EALA would include language directly taken from the statute itself, or some incorporation of the "inherent risk" idea, in order to put the participant on notice of the inherent risks of the sport and of the existence of any relevant statute. Such measures would be taken with an eye toward avoiding unnecessary problems of ambiguity should the matter end up in court.

II. ANALYSIS OF THE EQUINE ACTIVITY LIABILITY ACTS

Twenty-nine states have passed some form of an EALA. While the statutes vary in form and, to a certain extent, in content, they all intend to protect equine professionals and sponsors of equine-related activities from civil liability for injuries resulting from the inherent dangers and risks associated with such activities. All of the statutes share

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101 Id.
103 Id. § 20-4-1.
104 412 S.E.2d at 509.
the common feature of not providing immunity for gross negligence.\textsuperscript{107} An important side note is that some states explicitly exempt the horse racing industry from their EALAs.\textsuperscript{108}

The simplest way to approach an analysis of twenty-nine similar laws\textsuperscript{109} is to first address the standard or common features, such as the "typical" definitions and terminology associated with EALAs,\textsuperscript{110} before


\textsuperscript{109} Due to time constraints and space limitations, not all of the statutes are discussed herein.

\textsuperscript{110} The following definitions serve as an example of typical definitions, though wording may vary slightly from state to state.

(1) "Engages in an equine activity" means 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.

(2) "Equine" means a horse, pony, mule, donkey, or hinny.

(3) "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.

(4) "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
turning to the anomalies. The definitions and terminology associated with EALAs must be considered before a model act can be proposed.

A. Sharing Similarities: Alabama, Colorado, Georgia, Louisiana, Massachusetts, Montana, Oregon, Rhode Island, South Carolina, South Dakota, and Tennessee

Nearly half of the EALAs enacted in this country share striking similarities. One of the unique features of these EALAs is that they center around the premise that equine professionals will be held liable in certain delineated circumstances, namely: for providing a faulty horse or faulty tack, for providing an animal without making a determination of the participant's ability to safely engage in the activity or safely manage the animal, for owning or leasing or controlling property and failing to warn of any latent defects thereon, for demonstrating willful and wanton disregard for safety, or for causing intentional injury. At the same time, these EALAs focus on immunity from liability when injury or death to a participant results from the "inherent risks" of equine activities. The most common and popular EALA is that which is characterized by the reliance on the definition of "inherent risk" and on the mandatory posting of warning signs.

arena at which the activity is held.

(5) "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;
   (c) or examining or administering medical treatment to an equine as a veterinarian.

(7) "Participant" means a person, amateur or professional, who engages in an equine activity, whether a fee is paid to participate in the equine activity.


113 E.g., WIS. STAT. ANN. § 895.525(3) (West Supp. 1993); WYO. STAT. § 1-1-123(a) (Supp. 1994).

These EALAs have no impact on liability when the equine professional has been negligent. A sample of the language used in such EALAs is:

[A]n equine activity sponsor, an equine professional, or any other person, which shall include a corporation or partnership, 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 representative of a participant shall make any claim against, maintain an action against, or recover from an equine-activity sponsor, an equine professional, or any other person for injury, loss, damage, or death of the participant resulting from any of the inherent risks of equine activities.\textsuperscript{115}

This language is virtually identical to that used by Colorado,\textsuperscript{116} Georgia,\textsuperscript{117} Louisiana,\textsuperscript{118} Massachusetts,\textsuperscript{119} South Carolina,\textsuperscript{120} and Tennessee.\textsuperscript{121} EALAs in Montana,\textsuperscript{122} Oregon,\textsuperscript{123} and South Dakota\textsuperscript{124} use more abbreviated language to make the same point. Rhode Island makes reference to inherent risks and then adds that no immunity exists when relevant persons fail to “exercise due care under the circumstances toward such participant.”\textsuperscript{125}

Another common characteristic of the EALAs in this category, excepting EALAs in Montana and Oregon, is that these states require warning signs to be placed in prominent locations on or near any areas where equine activities are conducted.\textsuperscript{126} The EALAs in these states mandate a standard sign with the warning written in one inch black letters.\textsuperscript{127} The same warning must also be contained in contracts for

\textsuperscript{115} ALA. CODE § 6-5-337(c)(1).
\textsuperscript{116} COLO. REV. STAT. § 13-21-119(3).
\textsuperscript{117} GA. CODE ANN. § 4-12-3(a).
\textsuperscript{118} LA. REV. STAT. ANN. § 9:2795.1(B).
\textsuperscript{119} MASS. GEN. LAWS ANN. ch. 128, § 20(b).
\textsuperscript{120} S.C. CODE ANN. § 47-9-720(A).
\textsuperscript{121} TENN. CODE ANN. § 44-20-103.
\textsuperscript{122} MONT. CODE ANN. § 27-1-727.
\textsuperscript{123} OR. REV. STAT. § 30.691(1).
\textsuperscript{124} S.D. CODIFIED LAWS ANN. § 42-11-2.
\textsuperscript{125} R.I. GEN. LAWS § 4-21-2.
\textsuperscript{126} COLO. REV. STAT. § 13-21-119(3); GA. CODE ANN. § 4-12-4(a); LA. REV. STAT. ANN. § 9:2795.1(B); MASS. GEN. LAWS ANN. ch. 128 § 2D(d)(1); S.C. CODE ANN. § 47-9-730(A); TENN. CODE ANN. § 44-20-105; S.D. CODIFIED LAWS ANN. § 42-11-5.
\textsuperscript{127} The standard warning reads:
professional services entered into by equine professionals. A characteristic of Oregon’s EALA is that it makes binding any release knowingly executed by an adult participant, so long as the release applies only to injuries resulting from the inherent risks of equine activities.

B. Idaho, Maine, New Mexico, North Dakota, Utah, Virginia, and Washington

The EALAs of these states are all fairly similar to each other, yet slightly different from the group discussed above. They are similar in that they contain little more than a statement that an equine professional will not be liable for any injury or death to a participant, except as specifically provided.

Idaho’s version of an EALA (called “Equine Activities Immunity Act”) is typical of the EALAs in this group and virtually identical to those of North Dakota and Washington in its immunity exemption for equine sponsors or professionals. Maine’s statute is much like that of

WARNING

Under [applicable state 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 state code provision].


Rhode Island’s warning reads:

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.

R.I. GEN. LAWS §§ 4-21-4.

COLO. REV. STAT. § 13-21-119(5); GA. CODE ANN. § 4-12-4(a); LA. REV. STAT. ANN. § 9:2795.1(E); MASS. GEN. LAWS ANN. ch. 128, § 2D(d)(1); S.C. CODE ANN. § 47-9-730(A); TENN. CODE ANN. § 44-20-105(b); S.D. CODIFIED LAWS ANN. § 42-11-5.

OR. REV. STAT. § 30.693.


Idaho’s immunity exemption provision states:

Nothing . . . shall prevent or limit the liability of an equine activity sponsor or an equine professional:

(a) If the equine activity sponsor or the equine professional:

(i) Provided the equipment or tack and the equipment or tack caused the injury; or
Idaho but goes further by requiring any written contract “entered into by an equine professional for the provision of professional services” to contain a statement of the inherent risks of equine activities, including a non-exclusive list of “inherent risks” enumerated in the statute. New Mexico’s EALA is also similar to Idaho’s, but it additionally requires a posting of notice, which includes a warning of the inherent risks of equine activities as well as the limited liability of the “operator, owner, trainer or promoter.” Utah’s EALA includes a provision stating that it does not apply to veterinarians bringing actions “to recover for damages incurred in the course of providing professional treatment of an equine” or those liable under “Estrays and Trespassing Animals” provisions of the state code.

Finally, Virginia has an additional provision in its EALA which addresses waivers. The provision requires that any waivers “give notice to the participant of the risks inherent in equine activities,” with such

(ii) 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, determine the ability of the equine to behave safely with the participant, and to determine the ability of the participant to safely manage the particular equine;

(iii) 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 or should have been known to the equine activity sponsor or the equine professional and for which warning signs have not been conspicuously posted;

(iv) 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;

(v) Intentionally injures the participant . . .

IDAHO CODE § 6-1802.

ME. REV. STAT. ANN. tit. 7, § 4104. The “inherent risks” listed in the Maine statute include:

A. The propensity of an equine to behave in ways that may result in injury, harm or death to persons on or around the equine;

B. The unpredictability of an equine’s reaction to such things as sounds, sudden movement and unfamiliar objects, persons or other animals;

C. Certain hazards, such as surface or 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, such as failing to maintain control over the equine or not acting within the participant’s ability.

Id.

N.M. STAT. ANN. § 42-13-5.

risks listed as shown in the statute. The statute further provides that the waiver shall remain valid unless expressly revoked by the participant or parent or guardian of a minor. In the case of school and college sponsored classes and programs, waivers executed by a participant or parent or guardian of a participant shall apply to all equine activities in which the participant is involved in the next succeeding twelve month period unless earlier expressly revoked in writing.

Virginia is the only state to delineate a waiver provision in such detail.

C. The "Recreation" States: Connecticut, Wisconsin, and Wyoming

Connecticut, Wisconsin and Wyoming have all taken the "recreation" track. Rather than addressing equine activities specifically, these EALAs are recreational in nature and encompass horseback riding within their scope. Connecticut's statute differs slightly from those of Wisconsin and Wyoming in that it addresses persons "engaged in recreational equestrian activities" under the same heading of the statute establishing a mandatory bicycle helmet law for children under twelve.

Wisconsin and Wyoming both incorporate horseback riding into the text of their recreational activity statutes, while Wyoming also specifically includes equine activities in general. Wisconsin's statute addresses the "risks inherent in the recreational activity" and notifies participants in the subheading titled "Appreciation of risk" that they accept these risks. Wyoming takes a similar view but actually codifies the assumption of risk principle by providing that "[a]ny person who takes part in any sport or recreational opportunity assumes the inherent risk of injury and all legal responsibility for damage, injury or death to himself or other persons or property . . ." Wyoming also explicitly states that

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133 VA. CODE ANN. § 3.1-796.132.
134 Id.
137 WY. STAT. §§ 1-1-121 to -123 (Supp. 1994).
139 WIS. STAT. ANN. § 895.525; WYO. STAT. § 1-1-123.
140 WIS. STAT. ANN. § 895.525(3).
141 Id.
142 WYO. STAT. § 1-1-123.
recreational providers are liable only for negligence, not for the inherent risks of the sport.¹⁴⁵

D. West Virginia: Imposing Duties on All Parties in a Safety Statute

West Virginia has taken a unique track to arrive at its EALA by explicitly imposing a duty on every equine professional and on every participant.¹⁴⁶ The duty statutorily placed on equine professionals goes beyond that provided for in other EALAs. Whereas other EALAs delineate the circumstances in which immunity is unavailable,¹⁴⁷ West Virginia incorporates those circumstances into an “affirmative” statute, rather than a “negative” one, by expressly mandating the duties a horseman owes to his participants.¹⁴⁸

With regard to the liability of an equine professional, the statute states in part, “A horseman shall be liable for injury, loss or damage caused by failure to follow the duties set forth in . . . this article where the violation

¹⁴⁵ Id.
¹⁴⁶ W. VA. CODE §§ 20-4-1 to -7 (Supp. 1994).
¹⁴⁷ Immunity is generally unavailable for a breach of the industry standard of care, for gross negligence, or for intentional injury. See, e.g., ALA. CODE § 6-5-337(7)(2); GA. CODE ANN. § 4-12-3.
¹⁴⁸ These affirmative duties are numbered and require the horseman to:

(1) Make reasonable and prudent efforts to determine the ability of a participant to safely engage in the equestrian activity, to determine the ability of the horse to behave safely with the participant, and to determine the ability of the participant to safely manage, care for and control the particular horse involved;

(2) Make known to any participant any dangerous traits or characteristics or any physical impairments or conditions related to a particular horse which is involved in the equestrian activity of which the horseman knows or through the exercise of due diligence could know;

(3) Make known to any participant any dangerous condition as to land or facilities under the lawful possession and control of the horseman of which the horseman knows or through the exercise of due diligence could know, by advising the participant in writing or by conspicuously posting warning signs upon the premises;

(4) In providing equipment or tack to a participant, make reasonable and prudent efforts to inspect such equipment or tack to assure that it is in proper working condition and safe for use in the equestrian activity;

(5) Prepare and present to each participant or prospective participant, for his or her inspection and signature, a statement which clearly and concisely explains the liability limitations, restrictions and responsibilities set forth in this article.

W. VA. CODE § 20-4-3.
of duty is causally related to the injury, loss or damage suffered."\textsuperscript{149} The West Virginia statute also describes the duties of participants, requiring them to know the range and limits of their ability and to act accordingly.\textsuperscript{150} The EALA states that participants shall be liable for violations of their duties.\textsuperscript{151}

E. Arkansas: Protection of Non-Profit Corporations Only

Arkansas\textsuperscript{152} is the only state which has limited its EALA to non-profit corporations engaged in equine activities. Due to its limited applicability, its text is the shortest of all the EALAs, confined to a one-sentence statement outlining liability only for “malicious, willful, wanton, or grossly negligent conduct.”\textsuperscript{153} While it may appear curious that the Arkansas legislature would target non-profit corporations for limitation of liability, presumably the growth and increased popularity of such programs as “Riding for the Handicapped” attracted legislative attention.

III. EQUINE ACTIVITY LIABILITY ACTS IN ACTION

A. Test Cases\textsuperscript{154}

Since EALAs are a relatively new phenomenon, case law interpreting or applying them is sparse. However, where EALAs have been utilized, they have served the purpose for which they were intended.\textsuperscript{155}

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\textsuperscript{149} Id. § 20-4-5.
\textsuperscript{150} Id. § 20-4-4.
\textsuperscript{151} Id. § 20-4-6.
\textsuperscript{152} ARK. CODE ANN. §§ 16-120-201 to -202 (Michie 1993).
\textsuperscript{153} The Arkansas EALA states:

No officer, employee, or member of the board of directors of a non-profit corporation . . . shall be held personally liable in any civil action for damages resulting from their acts of commission or omission relating to an equine activity sponsored, organized, promoted, or otherwise assisted by the nonprofit corporation, except that this subchapter does not shield them from liability for their malicious, willful, wanton, or grossly negligent conduct.

\textit{Id.} § 16-120-202.
\textsuperscript{154} Portions of this section are reprinted with permission from the \textit{Equine Law & Business Letter}, © Copyright 1993, Hippodrome Press, Inc.
\end{flushleft}
Not surprisingly, Colorado and Washington, among the first states to enact EALAs, were the first to receive test cases. The test cases in both states centered on the specific language in the statutes and on whether the equine professional, in one case, and the injured rider, in the other case, fit within the statutory language in advancing their respective positions. Additionally, one case involved the unique issue of whether an exculpatory agreement could bar the litigation entirely.

*Day v. Snowmass Stables, Inc.*, the first case to interpret the Colorado EALA, resulted in the court ordering a trial to be held to determine whether the defendant stable, against which a negligence claim was brought for injury arising from faulty equipment, was liable under the statute. In *Day*, the neck yoke of one of the wagons in a wagon train broke, causing the wagon operator to lose control. That wagon collided with the one in which the plaintiff was riding and the plaintiff was thrown from the wagon and injured. The plaintiff claimed the stable was negligent in that it knew or should have known that the neck yoke ring and the wagons were faulty. The defendant stable moved for summary judgment on two grounds: (1) that the plaintiff had signed a release, and (2) that the Colorado EALA protected the defendant from liability. The trial court denied the summary judgment motion on both grounds.

With regard to the release, the court noted that while Colorado law did permit a party to shield itself from liability for negligence, such an intent to exculpate must be clear and unambiguous. The court held the exculpatory agreement signed by the plaintiff did not “clearly and unambiguously release the stable from liability for [the plaintiff’s] negligence claim.” Furthermore, the court accepted the plaintiff’s argument that the risks created by faulty equipment were not the type of “obvious risk” that the plaintiff assumed when she signed the release.

(holding that the purpose of Washington’s EALA is to limit liability).

157 *Patrick*, 855 P.2d 320.
158 *Day*, 810 F. Supp. at 293.
159 Id. at 295.
160 Id.
161 *Id.* at 291.
162 *Id.* at 293.
163 *Id.*
164 *Id.* at 295.
165 *Id.* at 294.
166 *Id.*
167 *Id.* at 294-95.
Turning to the EALA, the court denied the defendant stable’s motion for summary judgment, stating that the statute “expressly declines to extend the immunity to equine professionals who ‘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.’” The court held a trial was necessary to determine “whether [the defendant stable] knew or should have known that the equipment or tack was faulty.” Thus, in this case, the Colorado EALA did not enhance the defenses otherwise available to the stable regarding the enforceability of the exculpatory agreement, as the operation of the EALA did not even enter into the discussion of the validity of the release.

The next reported case involving an EALA occurred in Washington. In *Patrick v. Sferra*, the defendant stable was deemed protected by the EALA where the plaintiff had tried to use the statute to expand the stable’s liability for giving her a horse on which she was injured. The Washington State Court of Appeals found the state’s EALA inapplicable to a claim against donors or sellers of a horse in a case where a rider was injured in a fall from her own horse.

In *Patrick*, the plaintiff, seeking damages for negligence under Washington’s EALA, sued the former owner of her horse and the owner of the stable where she kept her horse. The plaintiff alleged that the stable gave her a certificate for a month’s unlimited riding at the stable on a “safe horse” with the possibility of someday owning the horse. The horse supplied to the plaintiff was an ex-racehorse named Duke which the owner eventually gave to the plaintiff. The defendant owner told the plaintiff that “Duke was a retired racehorse, and that Duke should be walked for a year to give his ankles and shins an opportunity to heal,” but the plaintiff apparently ignored this advice and continued to ride the horse daily at the farm of the defendant stable owner, where she also continued to board the horse. Once while on a ride, Duke “acted up,” throwing the plaintiff and knocking her unconscious. The plaintiff was in a coma for over a week and suffered brain damage.

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168 *Id.* at 295 (quoting COLO. REV. STAT. § 13-21-119(4)(b)(I)(A) (1992)).
169 *Id.*
171 *Id.* at 321.
172 *Id.* at 322.
173 *Id.* at 321.
174 *Id.*
175 *Id.* at 322.
176 *Id.*
In her claim for damages under the Washington EALA, the plaintiff asserted that the stable owner and Duke's former owner were equine activity sponsors under the definition of the act, and "that they 'provided' Duke to her without having made reasonable efforts [to] determine that Duke was suitable for her use" as required under the statute. The court, however, held that the plaintiff's claim did not fit within the language of the statute and determined that it would be inappropriate to expand the statute to include the plaintiff's claim since "the plain purpose of the act is to limit liability and not to expand it." The court stated that "the whole thrust of the statute" is to protect people and organizations who sponsor riding activities, not all providers of horses. To hold otherwise "would yield an extraordinary result: a stable operator would be liable to an owner riding her own horse, off the stable operator's property, merely because the stable operator brought the owner and the donor of the horse together." The court concluded "that any responsibilities of [the defendants] to the plaintiff under the Equine Activities Act terminated when [the plaintiff] accepted title to Duke."

The holding in this case is important not only for offering interpretations of language in Washington's EALA, but also, on a broader scale, for establishing that sections of the statute which are intended to protect equine professionals cannot be construed to impose liability against them. The court's decision in *Patrick* illustrates the extent to which plaintiffs

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177 *Id.* The specific language at issue in the Washington statute states:

(b) Nothing in subsection (1) of this section shall prevent or limit the liability of an equine activity sponsor or an equine professional:

(i) If the equine activity sponsor or the equine professional:

(A) Provided the equipment or tack and the equipment or tack 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, determine the ability of the equine to behave safely with the participant, and determine the ability of the participant to safely manage the particular equine;

(ii) If the equine activity sponsor ... 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 or should have been known to the equine activity sponsor ... and for which warning signs have not been conspicuously posted.

178 *Id.*

179 *Id.* at 323.

180 *Id.*

181 *Id.* at 324.
may be barred from inventing ways to circumvent or add to the specific language found in the EALA.

These two cases are also important for the precedential value their interpretations may have in other states with similar EALAs. Washington and Colorado were among the first states to adopt EALAs. Most of the EALAs that followed are virtually identical, if not literally, at least in intent and purpose. Commentators have noted that "the fact that a statute of another state not only is similar but also has a similar legislative history to that of the statute being construed furnishes added reason to consider it relevant for interpretive purposes." In other words, due to the similarities between these EALAs and those of other states, courts in other states may inevitably be asked to follow the prior decisions and the statutory constructions of the Washington and Colorado EALAs.

B. EALAs in Arbitration

While arbitration reports generally provide no precedential value in a court of law, they are relevant in that they reflect an arbitrator’s binding interpretation of the law at issue. Recently, a Colorado arbitrator ruled in binding arbitration that a stable which rented horses for a hunting trip was not responsible for a customer’s injuries sustained when he was bucked from his mount. Of particular significance are four of the six matters considered by the arbitrator in Conger v. Sombrero Ranches, Inc.: (1) the effect of one party’s execution of a release, purportedly on behalf of the entire party, on the plaintiff; (2) the effect of the Colorado EALA on the plaintiff’s claim; (3) the effect of the alleged EALA violation on the plaintiff’s claim that the stable failed to determine his ability to safely ride the horse from which he fell; and (4) the effect of the alleged EALA violation on the plaintiff’s claim that the stable committed an act or omission that constituted willful or wanton disregard for the safety of the plaintiff, thereby causing his injury.

The facts of Conger were relevant to the conclusion reached by the arbitrator, and, to a great extent, the ruling was fact specific. In Conger,

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183 2B SINGER, supra note 75, § 52.01 (discussing the problems and relevance of similar statutes of other states).
184 See id. §§ 52.01-.03.
186 Id. at 1-2.
the rental stable shipped the horses to the hunting party, and each hunter arbitrarily chose a horse as they were unloaded from the truck. The stable had selected the horses in consideration of their suitability to the terrain, the type of trip, and the weight of the members in the hunting party. On the second day of the trip, the plaintiff saddled and bridled his horse, and then, with a rifle slung diagonally across his shoulder, he mounted the horse. The horse bucked and threw the plaintiff to the ground, causing the plaintiff to fracture his neck and hip.

With regard to the release, the arbitrator concluded that in the absence of evidence that the plaintiff had specifically authorized the signing of the release on his behalf or that the plaintiff had ratified the release agreement, the exculpatory provisions of the release could not bind the plaintiff. Given the fact that the case arose after the enactment of Colorado's EALA, the plaintiff argued that the defendant had violated the EALA and therefore was estopped from relying on the EALA's limited liability or immunity provisions. However, the arbitrator disagreed, noting that the defendant appeared to fit within the scope of an "equine professional" as contemplated within the statute, and stating that a "plain reading of the act leads me to conclude that the General Assembly intended to limit the liability of an equine professional, such as [the defendant stable], to those situations delineated in subsection (4)(b)" of the EALA. The arbitrator went on to state that he saw "no indication in [the EALA] that the General Assembly intended to resurrect common law liability by virtue of an equine professional's disregard or violation of the statute." With regard to the requisite notice of the inherent risks to be given to participants who sign contracts with equine professionals, the arbitrator concluded that even where such notice was not present in the contract,

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187 Id. at 7.
188 Id. at 6-7.
189 Id. at 7.
190 Id. at 7-8.
191 Id. at 14. The arbitrator did not discuss the potential effect of the EALA on the release because the release was deemed invalid.
192 Id. at 12.
193 Id. at 12. The text of (4)(b) states that the liability of an equine professional shall not be prevented or limited in instances where the equine professional "[p]rovided the animal and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity" or "[c]ommitted an act or omission that constitute[d] willful or wanton disregard for the safety of the participant" and which resulted in the participant's injury. COLO. REV. STAT. § 13-21-119(4)(b) (1994).
194 Conger, Case No. 93-341, at 13.
the legislature did not intend to prevent the equine professional from relying on the limited liability provisions of the EALA. Nevertheless, the arbitrator decided that sufficient notice had been given in the rental contract, and that such notice was imputed to all the members of the hunting party through their agent, the signer of the rental agreement.

As for the alleged violations of the EALA, the plaintiff claimed that the rental stable had failed to determine his ability to safely manage the horse. However, the arbitrator found insufficient evidence for this allegation. Apparently, the stable evaluated the horse prior to purchase and then again prior to renting the horse out to the public at the beginning of each season. In the two years preceding the incident, the horse had been rented out in excess of 1000 times, without any report of any bucking or unruly behavior. The arbitrator concluded that the horse's action on the date of the plaintiff's injury was "not so out of character for a trailworthy horse as to warrant the conclusion that [it] had a pre-existing bucking vice," and that the plaintiff "surely knew . . . that a horse otherwise docile can become frightened and unruly when confronted with some perceived threat to its well-being." The arbitrator also noted that in light of the evidence of the stable's program of risk management, nobody had any reason to believe that the horse that injured the plaintiff was other than "gentle and trailworthy" and "suitable for riders with limited riding experience or ability." The arbitrator also concluded that the record was "devoid of any evidence of willful or wanton conduct" by the stable.

In Conger, the arbitrator specifically concluded that the rental stable was "not estopped from invoking the limited liability provisions of the Equine Immunity Act" and that the provisions of the EALA would determine the stable's liability to the plaintiff. The Colorado EALA protected the stable from liability in a situation where injury was determined to have been caused by the inherent risks of horseback riding.

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195 Id.
196 Id.
197 Id. at 15.
198 Id.
199 Id. at 15-16.
200 Id. at 16.
201 Id.
202 Id.
203 Id. at 17.
204 Id. at 19.
205 Id.
206 Id. at 12-13.
Where the conduct of the stable had not violated the industry standard of care as delineated in the EALA, the matter was adjudged according to the provisions of the EALA, and the stable was entitled to the protection offered by the EALA.

C. Insurance

The effect EALAs will have on insurance is of the utmost importance, as one of the purposes of EALAs is to make the horse industry more insurable. While EALAs were passed primarily to benefit the horse industry, support for the enactment of these statutes may also be found in the insurance industry.207

According to a representative of North American Livestock, Inc. ("NAL"), one of the many insurers of the horse industry, the benefits of EALAs will be felt by both the insurance and the horse industry, since a reduction in claims will in turn result in a reduction in insurance costs and premiums.208 NAL, which provides property, casualty and mortality insurance, is also "strongly considering the introduction of a rate reduction of five to ten percent for liability to those states which have passed strong equine laws."209 Additionally, NAL has taken the position that EALAs will strengthen the effectiveness of release agreements, which NAL's insureds are required to use.210

The effect on insurance, however, will only be visible after several years, as premiums and insurance rates are based on litigation rates. As seen in Colorado and Washington, "test cases" designed to prove loopholes and exceptions or to interpret various statutory provisions will inevitably follow the passage of an EALA. Thus, absent initiatives similar to those suggested by NAL, it may take years before the insurance industry begins to change premium structures.

IV. PROPOSED MODEL EALA AND COMMENTS

A. Introduction

A new statutory framework would more appropriately resolve the issues that the current EALAs create or leave unresolved. Therefore, this

208 Id.
209 Id.
210 Id.
section sets forth the following proposed Model EALA (the "Model EALA"). The Model EALA is accompanied by comments explaining how and why it differs in various respects from the existing EALAs discussed in part II.

The Model EALA is similar to Colorado’s EALA, yet it contains some modifications. The most noteworthy areas of discrepancy lie in the “engages in equine activity” definition and the “warning sign” provisions. Other additions are few but important.

The Model EALA deals only with equine activities, to the exclusion of other recreational or sporting activities. The basic objection to the “recreational” statutes is that they contain incomplete definitions. For example, Connecticut and Wisconsin define horseback riding generally as one of many recreational activities. Without further definition or elaboration, this term is too broad, for not all equine activities are recreational, nor do they all include “riding.” In application, the term could be narrowly interpreted, thus defeating the purpose of the statute. On another matter, Wyoming’s EALA is more detailed and tries to incorporate the “inherent risk” concept, but it does so incompletely. The statute defines inherent risk as “those dangers or conditions which are an integral part of equine activities or horseback riding.” In comparison to other states’ definitions of inherent risk, Wyoming’s definition is simply too vague.

B. The Proposed Model Equine Activity Liability Act

This part of the Article presents a Model EALA with comments following each section of the Act to explain how and why it differs in various respects from related sections in existing EALAs.

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211 The Model EALA was created exclusively by the author.
212 See supra notes 106-53 and accompanying text.
213 The author referred to Colorado’s EALA, COLO. REV. STAT. § 13-21-119 (1994), in forming the “Model EALA” because the Colorado EALA is quite comprehensive. Also, many other states have, to a great extent, patterned their EALAs after Colorado’s. See, e.g., IDAHO CODE §§ 6-1801 to -1802 (1990); UTAH CODE ANN. §§ 78-27b-101 to -102 (Supp. 1994); WYO. STAT. §§ 1-1-121 to -123 (Supp. 1994). However, as discussed in this section, further refinement might achieve the intended purpose more effectively.
215 WYO. STAT. § 1-1-122(a)(i).
216 Id. § 1-1-122 (a)(v).
Equine activities—legislative declaration—exemption from civil liability.

(1) The Legislature recognizes that persons who participate in equine activities may incur injuries as a result of the risks inherent in such activities. The Legislature also finds that the state and its citizens derive numerous economic and personal benefits from equine activities and related industry. It is, therefore, the intent of the Legislature to encourage equine activities by limiting the civil liability of those involved in such activities.

Author's explanation: Alabama, Colorado, Georgia, New Mexico, and Tennessee use virtually the same statement of legislative intent. In fact, besides Montana and West Virginia, they are the only states to include a statement of legislative intent in the text of their EALAs. The statement of legislative intent and purpose used in the Model EALA is based on those of Alabama and the above-mentioned states.

(2) As used in this section, the following words shall have the following meanings, unless the context indicates otherwise:

Author's explanation: Those states which include definitions in their EALAs have definition sections which are practically identical. Thus, the definitions in the Model EALA are not original. However, the Model EALA also protects veterinarians and farriers and adds additional detail to certain areas such as the definitions of “engages in an equine activity” and “equine activity.”

(A) “Engages in an equine activity” shall mean: riding, training, driving, or in any manner controlling an equine,
whether mounted or unmounted; being a passenger upon an equine; assisting in the medical treatment of an equine; assisting a participant in an equine activity; assisting management at an equine activity; or sponsoring an equine activity. The term "engages in an equine activity" shall also include spectating at an equine activity.

Author's explanation: The major difference between the current EALAs and the Model EALA is that the proposed act includes spectators of equine activities in the definition of "engages in an equine activity." All of the state EALAs which provide a definition for this term do not include spectators, unless the spectator places himself or herself in an "unauthorized area" and "in immediate proximity to the equine activity."221

This exclusion of spectators presents a problem because, in reality, attendance at most equestrian events (such as horse shows) places one in immediate proximity of horses, without necessarily placing one in immediate proximity of "the equine activity," which is the official event taking place. Thus, while the premise that a spectator is not a participant in the event or equine activity is correct, the spectator's "engagement" may be virtually on par with that of some participants. As such, spectators, like participants, confront "inherent risks." For example, spectator parking may be in the same area as horse trailer parking; often, spectator parking is ringside. Furthermore, making a statutory distinction between authorized and unauthorized areas is ridiculous when the majority of equine events make no such distinction. The average horse show is not like a professional hockey or football game, where spectators are separated from the players by plexi-glass walls or fences, or by the height and detachment of grandstands. Spectating might very well mean observing a horse from an "arena" which is part of a field cordoned off with a flimsy and temporary marker or rope.

Thus, for practical reasons, spectators should be included in the definition of persons engaged in an equine activity. While spectators may not be entered in the activity or competition, they have every opportunity to place themselves in immediate and constant proximity to the animals.

221 See, e.g., COLO. REV. STAT. § 13-21-119(2)(a.5) (1994) ("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 or herself in an unauthorized area and in immediate proximity to the equine activity.").
(B) "Equine" shall mean a horse, pony, mule, donkey, or hinny.

Author’s explanation: The Model EALA presents a standard definition of "equine," and, unlike the Colorado EALA, on which the Model EALA was based, does not provide added coverage specifically for llamas. Most states which include definitions in their EALAs do not provide coverage for llamas.

(C) "Equine activity" shall be broadly construed to mean:

(i) equine 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 shows, grand prix jumping, three-day events, combined training, rodeos, driving, pulling, cutting, reining, team penning, barrel racing, polo, steeplechasing, English and western performance riding, endurance and non-endurance trail riding, western games, hunting, packing, and recreational riding;

(ii) equine or rider training, teaching, testing, or evaluating, including clinics, seminars and symposiums;

(iii) equine boarding, including normal daily care, thereof;

(iv) trailering, loading, or transporting an equine;

(v) 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;

(vi) rides, trips, hunts, brandings, roundups, cattle drives, or other equine activities of any type, however informal or impromptu, that are sponsored by an equine activity sponsor;

(vii) placing, replacing, or removing horseshoes from, or trimming the hooves of, an equine;

(viii) providing or assisting in veterinary treatment or maintenance care of an equine.

222 Col. Rev. Stat. § 13-21-119(1) ("The general assembly recognizes that persons who participate in equine activities or llama activities may incur injuries as a result of the risks involved in such activities.").
Author's explanation: While the definition of "equine activity" is expressly to be construed broadly, the Model EALA nevertheless specifically expands the standard existing definition to include transporting equines and veterinary and farrier activities. It is logical to include the activities of all persons involved with the equine.

(D) "Equine activity sponsor" shall mean an individual, group, club, partnership, or corporation, whether or not the sponsor is operating for profit or nonprofit, 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, activities and programs; therapeutic riding programs; and operators, instructors, and promoters of equine facilities, including but not limited to stables, clubhouses, ponyride strings, fairs, training facilities, show grounds and arenas at which an equine activity is held.

Author's explanation: The standard definition for "equine activity sponsor" is adopted by the Model EALA. This standard definition is not expanded upon due to its thoroughness and completeness.

(E) "Equine professional" shall mean a person engaged for compensation in:
   (i) training, teaching, instructing, testing, or evaluating an equine or participant;
   (ii) renting to a participant an equine for the purpose of riding, driving, or being a passenger upon the equine;
   (iii) renting equipment or tack to a participant;
   (iv) providing daily care to horses boarded at an equine facility; or
   (v) providing veterinary or maintenance care to an equine.

Author's explanation: The Model EALA's definition of "equine professional" is expanded to include persons involved in boarding, veterinary, or maintenance activities. It is logical to include all persons involved with the equine, regardless of their roles.

(F) "Inherent risks of equine activities" shall mean those dangers or conditions which are an integral part of equine activities, including, but not limited to:
(i) the propensity of an equine to behave in ways that may result in injury, harm, or death to persons on or around them;
(ii) the unpredictability of an equine’s reaction to such things as sounds, sudden movement, and unfamiliar objects, persons, or other animals;
(iii) certain hazards such as surface and subsurface conditions;
(iv) collisions with other equines, animals, people, or objects;
(v) 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 to act within his or her ability.

Author’s explanation: The Model EALA uses the “inherent risk” format adopted by the standard EALAs. This format most accurately deals with the problems and issues arising from injuries related to equine activity. Most often these injuries are the result not of negligence but of horses behaving like horses—living, thinking, unpredictable animals. At times, an equine professional is as helpless to control a horse as the average person would be to control a half-ton cat or dog.

(G) “Participant” shall mean any person, whether amateur or professional, who engages in an equine activity, whether or not a fee is paid to participate in the equine activity.

Author’s explanation: The standard definition of “participant” is adopted by the Model EALA. This standard definition is not expanded upon due to its thoroughness and completeness.

(3) Except as provided in subsection (4) of this section, an equine activity sponsor, an equine professional, a participant, a doctor of veterinary medicine, a farrier, or any other person, including but not limited to, a corporation or partnership, shall not be liable for an injury to or the death of a participant resulting from the inherent risks of equine activities; and, except as provided in subsection (4) of this section, no participant nor participant’s representative shall make any claim against, maintain an action against, or recover from an equine activity sponsor, an equine professional, a participant, a doctor of veterinary medicine, a farrier, or any other person for injury, loss, damage, or
death of the participant resulting from any of the inherent risks of equine activities.

Author’s explanation: The standard definition is generally adopted by the Model EALA, but it is expanded to include veterinarians and farriers, as it is only logical to include all persons involved with the equine, regardless of their roles.

(4) (A) Nothing in subsection (3) of this section shall 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:

(i) (a) provided the equipment or tack and knew or should have known that the equipment or tack was faulty or defective, and such fault or defect 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 determine the ability of the participant to safely manage the particular equine based on the participant’s representation of his or her ability;

(ii) 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;

(iii) 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;

(iv) intentionally injures the participant.

Author’s explanation: The Model EALA uses the same industry standard of due care that appears in the vast majority of EALAs: that is, to refrain from providing faulty tack or equipment, to refrain from intentionally injuring, and to determine, based on the participant’s representations, the ability of the participant to safely participate in the equine activity and manage the animal. This standard is not expanded upon due to its thoroughness and completeness.
(B) This section shall not apply to the horse or mule racing industry.

(C) Nothing in subsection (3) of this section shall prevent or limit the liability of an equine activity sponsor, an equine professional or any person under the liability provisions as set forth in the product liability laws.

Author's explanation: The Model EALA is inapplicable to the horse racing industry, and it in no way interferes with product liability laws, as EALAs are not meant to preclude causes of action arising under other statutes.

(5) (A) No participant or parent or guardian of a participant who has knowingly executed a waiver of his or her rights to sue or recover from an equine activity sponsor, an equine professional or any other person may maintain an action against or recover from an equine activity sponsor, an equine professional or any other person, for an injury to or the death of a participant engaged in an equine activity and resulting from an inherent risk associated with equine activities.

(B) A waiver is required in order to give notice to the executor of the waiver of the risks inherent in equine activities. To be valid, it must specify:

(i) the propensity of an equine to behave in ways that may result in injury, harm, or death to persons on or around them;

(ii) the unpredictability of an equine's reaction to such things as sounds, sudden movement, and unfamiliar objects, persons, or other animals;

(iii) certain hazards such as surface and subsurface conditions;

(iv) collisions with other equines, animals, people, or objects;

(v) 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 to act within his or her ability.

(C) A valid waiver shall remain valid unless expressly revoked by the participant or parent or guardian of a participant. In the case of school- or college-sponsored classes, activities, or programs, waivers executed by a participant or
parent or guardian of a participant shall apply to all equine activities in which the participant is involved in the next succeeding twelve-month period unless earlier expressly revoked in writing.

Author's explanation: As discussed in part II, many of the EALAs include provisions for warning signs to be posted prominently in locations near and around equine activity facilities in order to inform participants of the limited liability protection afforded by the statute in the particular state. The problem with the posting of warning signs and notices is that these devices will provide the only exposure that the average lay person will have to the EALA. While this result should not be a surprise to anyone, the bigger problem is that the average lay person with no equine experience will have no idea what the "inherent risks of equine activities" are. Additionally, no purpose would be served by including the statutory definition of that term on the signs, because the longer the sign, the less likely it will be read at all. Thus, unless the participant is specifically aware of what the inherent risks are, posting a sign is pointless.

The Model EALA does not provide for the placing of prominent warning notices. Instead it simply confines the warning notice to a pre-participation release or waiver which a participant is required to sign. The statutory definition of "inherent risks of equine activities" must be included in the waiver/release and prominently located and highlighted in order for the waiver/release to be valid. Participants are more likely to read a notice which they are required to sign than they are to read a dusty sign on the side of a barn or riding arena. Maine and Virginia are the only states which have done anything similar, and the Model EALA is based on such a premise.

Another important reason for this provision arises in states which recognize the doctrine of assumption of risk. A defendant equine professional attempting to avoid litigation by claiming a release as a contractual assumption of the risks "inherent" in equine activities would likely discover the release invalid if the participant did not subjectively understand those risks. Thus, it is of the utmost importance to include a statement of those risks for the participant at the time of signing the

223 See supra pp. 15-23.
224 ME. REV. STAT. ANN. tit. 7, § 4104-A (West Supp. 1994); VA. CODE ANN. § 3.1-296.132(B) (Michie 1994).
225 See RESTATEMENT (SECOND) OF TORTS § 496D cmt. b (1965).
release. Merely citing to the statute does not give the participant any subjective awareness of the inherent risks which he or she is about to assume.

Furthermore, in the absence of a posting requirement, the required release gives notice to the participant of the inherent risks of equine activities. Such notice is important in the event a plaintiff attempts to circumvent an EALA by bringing a claim for negligent failure to inform of inherent risks. The defenses afforded by the doctrine of assumption of risk or by an EALA would be precluded by such lack of notice, since one of the touchstones to such defenses is that the risk was known to the plaintiff when encountered. Thus, the importance of imparting upon the participant a subjective awareness of the inherent risk about to be assumed is not to be overlooked.

CONCLUSION

EALAs aim to reduce the frequency of litigation associated with equine activities by eliminating liability for certain inherent risks. Once achieved, this result in turn will cause less time and money to be spent on legal matters and more time and money to be spent on the pursuit of equine activities, which will benefit the equine, recreation, and tourism industries of the states where EALAs have been enacted. Eventually, less litigation will mean lower insurance rates for those seeking insurance, and fewer costs will mean greater profit.

In conclusion, EALAs will benefit equine professionals in the manner intended by providing them with a statute and proof of legislative intent to limit their civil liability in matters arising from the inherent risks of equine activities. The provisos restricting the operative effect of the immunity provisions basically define the generally accepted industry standard of care and codify the common law definition of negligence in the industry.