Tort Reform

Despite the protection of contributory negligence laws for the Maryland horse industry, there is still a need to address the threat of frivolous lawsuit. Proposed changes to tort law include:

1) Discourage Frivolous Lawsuits By Making Plaintiffs Pay All Costs If They Lose

Discourage frivolous lawsuits by making plaintiffs who bring such suits pay all costs (including court costs and the legal fees incurred by the defendant) if they lose (and the case is determined to be frivolous).

2) Limit Punitive Damage Awards

Unlike the frivolous lawsuit reform (which would deter lawsuits), limiting punitive damages would reduce the monetary amounts awarded to plaintiffs, but not necessarily reduce or eliminate the number of law suits brought to court. Punitive damages are above and beyond damages to compensate for injuries incurred; punitive damages are an extra punishment on the defendant for malice-based behavior.

3) Immunity Laws Protecting Specific Groups

Under Maryland's present tort system, the defenses of the assumption of risk and contributory negligence protect and limit liability in the equine industry. Any new immunity bill would need to be drafted so as to not reduce the protection we have under the present system. For example, narrow definitions in an immunity bill could provide less protection than we presently have.

In addition, many legislators question the fairness of limiting liability for specific industries. If they legislate immunity of the horse industry, what about the ski industry? The boating industry? Ice rinks? Go Kart operators? Where will special exemption immunity legislation end?

4) Convert the entire Maryland tort system to Comparative Negligence

Not only would changing from contributory negligence to comparative negligence make it possible for plaintiffs who are themselves negligent or irresponsible to recover damages, it would also render useless hundreds of years of case law favorable to the Maryland horse industry. This is not something the Maryland Horse Council supports.

MHC's Recommendations

The Maryland Horse Council believes the most promising approach in Maryland is for the horse industry to work together with other industries on general tort reform while protecting the positive aspects of Maryland's tort law.

Maryland's contributory negligence and assumption of the risk defenses need to be safeguarded. Maryland case law shows the positive effect of such defenses on the horse industry. Therefore we oppose attempts to change the basis upon which Maryland courts assess liability from contributory negligence to comparative negligence, and any reform aimed at limited the existing defenses.

The Maryland Horse Council favors a more general reform approach focused on limited lawsuits and damage awards. As a member of the Maryland Chamber of Commerce, the Maryland Horse Council will work with the Chamber's Liability Reform Committee and the Maryland Tort Reform Coalition to improve Maryland tort law without losing the positive parts of the present system.

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Many thanks to Cooke & Associates for their assistance in preparing this pamphlet.

ISSUE ANALYSIS

Insurance, Litigation, Liability Reform and the Effect on the Maryland Horse Industry

Insurance Problems and Explanations

During the 1980s, liability insurance for horse farms, boarding stables and other equine operations suddenly became extremely difficult to obtain, and to keep. Certain insurance companies even cancelled the coverage of long time customers with excellent claims and payment records, while others raised premium rates so high that insurance costs became an obstacle to survival.

Some stable operators continued in business without insurance (surely against the advice of their attorneys), while many others went out of business altogether. Liability insurance became the primary topic of concern among people in the horse business, and many predicted the end of all public boarding and riding stables in the U.S. because of this insurmountable insurance problem.

When brokers and agents were asked why premium rates were so high, and why so many companies seemed to be turning their backs on the horse insurance business, they answered what they understood and what they had been told: i.e. the problem was risk. Horses, by nature, are risky animals, and insurers were no longer willing to risk huge injury settlements by covering people unfamiliar with horses.

Yet, by itself, the mere riskiness of the horse industry cannot fully explain why so many insurance companies decided to stop insuring stables and farms in the 1980s. After all, the very definition of the insurance business is the calculation and assumption of risk, whether fire and casualty, auto, life and accident, health, malpractice, drought, or even earthquakes.

What impacts the insurance business even more than risk (premium-claims ratio) are changes in interest rates. Insurance companies tend to be major lenders—far more than borrowers—so when interest rates are high or rising, they do well. But when interest rates plummet, as they did in the late 1980s, insurance companies get nervous, especially about exposure in specialty, so-called "niche" markets. They either raise rates or get out entirely.

From an insurance-industry market standpoint, the horse industry is small and specialized, regardless of studies showing how big it is. Unless insuring horse operations is the core of their business, insurance companies will get rid of their specialized equine experts when cash flow gets tight. Obviously, when remaining firms see others getting out, they raise their premium rates enough to stay in the business.

Tort Law

Tort law involves civil actions for damages. When a driver of an automobile involved in an auto accident brings suit against the other driver involved in the accident for injury sustained and/or damages to the automobile, you have a tort case. Similarly, when a customer sues the coffee seller for injury sustained from a scalding hot cup of coffee, you have a tort case. It is in this area of tort law that huge settlements are awarded. Reform of tort law is not equine specific; rather, it is an issue affecting businesses, land owners and the general public.

There is growing interest in addressing liability issues and the growing number of tort cases. A Maryland survey in 1994 showed that people were concerned about "too many lawsuits, too many lawsuits being filed frivolously, and damage awards that are too high." It is a common sentiment among much of the population that "too many people are getting large damage awards they don't deserve and too many people are being sued who don't deserve it."

Contributing to this perception is the fact that insurance companies will often settle claims, no matter how frivolous, out of court, in order to avoid trial costs. This unfortunately increases the perception by land and stable owners that they are in a precarious position.

Immunity & Limited Liability Laws For The Horse Industry

Many states now have passed equine immunity bills, also known as limited liability laws. These laws, in essence, a) define the basic nature of a horse, and b) establish that, as long as the operator of the facility complied with state requirements for signage, etc., his clients would be considered to have assumed the risk. It was theorized that if such laws eased the minds of actuaries, the subsequent entry (or re-entry) by firms into the horse-insurance market in states with these laws might then lead to competition and hence, lower premiums, and such laws might also reduce the number of lawsuits in those states. Neither of these have come to pass.

Why hasn't such a bill been passed in Maryland, just in case it might help?

First , it is important to understand the conditions under which the courts assign negligence, and hence liability.

Huge damage awards are not common in the Maryland horse industry

Comparative Negligence

Most states evaluate negligence based on comparison. This allows a plaintiff, even if that plaintiff contributed to his own accident through his actions, to recover some percentage of his damages, even though he was in some degree responsible. For example, in the auto accident, if A sues B for injury sustained in the car accident, and both drivers were at fault (e.g. A was speeding and B ran through the stop sign), A can still recover for a portion of the damages based on B being partly responsible.

But not in Maryland.

Maryland: One of the Last Contributory Negligence States

Maryland laws, established in colonial days, evaluate the liability for negligence on the contribution of both parties. Therefore, in Maryland, under contributory negligence, because A is partly at fault, and thus partly responsible for his injuries, A is precluded from recovering anything from B.

How does this translate into "horse language?" If A (either the owner or lessor of a horse) sustained a head injury while riding and decided to sue B (the stable owner), and if the courts find in any way that A contributed to his own injuries, A will lose. For example, if the rider was required to wear a helmet while riding in the ring or anywhere on the property, and refused to wear a helmet, and while riding, the horse spooked at something (a tractor, another horse running down the aisle way, whatever), and consequently sues B (the stable owner) for negligence, claiming the stable owner was negligent in allowing the tractor to rumble by or the other horse to escape, which consequently caused the horse to spook, the court will have to consider A's negligence in not wearing a helmet and how that also contributed towards A's injuries. As such, in Maryland, A is precluded from recovering anything from B.

Maryland case law (lawsuits that actually made it to court) shows the positive effect of such defenses on the horse industry. Current case law recognizes and acknowledges the nature of horses and the risks involved, and thus huge damage awards have not been common in the Maryland horse industry.

Maryland's contributory negligence law is beneficial to the horse industry and should be preserved.