

WHAT YOU *Didn't Know* ABOUT LIABILITY INSURANCE

BY JULIE I. FERSHTMAN, ATTORNEY AT LAW

Every year, you write the check to your insurance agent, fully expecting that you're covered for liabilities arising from your horse-related activities. But what if a claim or lawsuit is brought against you, and you discover that you're not covered for it?

Here are some equine liability insurance coverage surprises that people have experienced over the years. With careful planning, you can make sure that they never happen to you.

Small Businesses

Most businesses in the equine industry are small businesses. For example, some people give riding lessons on the weekends to earn a few extra dollars, and barn owners sometimes board a small number of horses to help fill stalls and pay the bills. These business operators might assume that the small scale of their activities makes business insurance unnecessary, and they might further assume that their standard homeowner's liability insurance coverage will extend to their businesses. *Nothing could be farther from the truth.*

Homeowner's insurance is not business insurance. In fact, homeowner's insurance policies almost always *exclude* coverage when someone is injured in connection with a "business pursuit." By comparison, commercial general liability insurance policies are designed to cover business-related risks, and equine professional liability insurance policies also exist. Small business owners can discuss appropriate coverage with their insurance agents.

Injuries to Horses in Your Care, Custody, or Control

Even if a boarding stable protects itself by purchasing commercial general liability insurance coverage, it might still be uninsured against a foreseeable risk – the risk of a horse becoming injured (or worse) at the stable. *Why?* Liability insurance policies typically *exclude* coverage for claims involving damage to or loss of personal property belonging to others in the stable's care, custody, or control. In the eyes of the law, horses are considered to be personal property.

By comparison, equine insurance companies

offer extra insurance to fill this coverage gap. For additional cost (depending on the type and extent of coverage you buy), insurers will sell coverage commonly known as a "care, custody, or control" endorsement. This endorsement offers coverage for claims against the stable involving injury or damage to boarded horses.

Coverage for Injured Workers

For equine business operators who have employees, commercial general liability insurance is rarely enough, especially because these policies often have "employee exclusions," which prevent coverage for claims brought by injured employees. These businesses would also need to purchase worker's compensation insurance.

The problem is, equine business operators wrongly assume that their workers are "independent contractors," not employees, and that they need no worker's compensation insurance. *That can be a costly mistake.* As a matter of law, your "independent contractors" might very well be employees. Before concluding that your business does not need worker's compensation insurance coverage, secure a knowledgeable opinion.

This article does not constitute legal advice. Please remember that the rights of an insurance company and its policyholders vary depending on the policy and the law. When questions arise based on specific situations, direct them to a knowledgeable insurance agent or attorney.

About the Author

Julie Fershtman is one of the nation's most experienced Equine Law practitioners. A Shareholder with the firm Foster Swift Collins & Smith, PC, based in Michigan, she has successfully tried equine cases before juries in 4 states. She has drafted hundreds of equine industry contracts and is a Fellow and officer of the American College of Equine Attorneys. Her speaking engagements on Equine Law span 29 states. For more information, please visit www.equinelaw.net and www.equinelawblog.com.