

C.R.S.A. § 13-21-119

#### C

West's Colorado Revised Statutes Annotated Currentness
Title 13. Courts and Court Procedure
Damages
Damages

\*\*Article 21. Damages (Refs & Annos)

\*\*Part 1. General Provisions (Refs & Annos)

- → \$ 13-21-119. Equine activities--lama activities--legislative declaration-- exemption from civil liability
- (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. The general assembly also finds that the state and its citizens derive numerous economic and personal benefits from such activities. It is, therefore, the intent of the general assembly to encourage **equine** activities and llama activities by limiting the civil liability of those involved in such activities.
- (2) As used in this section, unless the context otherwise requires:
- (a) "Engages in a llama activity" means riding, training, assisting in medical treatment of, driving, or being a passenger upon a llama, whether mounted or unmounted or any person assisting a participant or show management. The term "engages in a llama activity" does not include being a spectator at a llama activity, except in cases where the spectator places himself in an unauthorized area and in immediate proximity to the llama activity.
- (a.5) "Engages in an **equine** activity" means riding, training, assisting in medical treatment of, driving, or being a passenger upon an **equine**, whether mounted or unmounted or any person assisting a participant or show management. 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 in an unauthorized area and in immediate proximity to the **equine** activity.
- (b) "**Equine**" means a horse, pony, mule, donkey, or hinny.
- (c) "Equine activity" means:
- (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 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;
- (II) Equine training or teaching activities or both;
- (III) Boarding equines;
- (IV) 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**;

- (V) Rides, trips, hunts, or other equine activities of any type however informal or impromptu that are sponsored by an equine activity sponsor; and
- (VI) Placing or replacing horseshoes on an equine.
- (d) "Equine activity sponsor" means 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, programs and activities, therapeutic riding programs, and operators, instructors, and promoters of equine facilities, including but not limited to stables, clubhouses, ponyride strings, fairs, and arenas at which the activity is held.
- (e) "Equine professional" means a person engaged for compensation:
- (I) In instructing a participant or renting to a participant an **equine** for the purpose of riding, driving, or being a passenger upon the **equine**; or
- (II) In renting equipment or tack to a participant.
- (f) "Inherent risks of **equine** activities" and "inherent risks of llama activities" means those dangers or conditions which are an integral part of **equine** activities or llama activities, as the case may be, including, but not limited to:
- (I) The propensity of the animal to behave in ways that may result in injury, harm, or death to persons on or around them:
- (II) The unpredictability of the animal'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 animals 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 not acting within his or her ability.
- (f.1) "Llama" means a South American camelid which is an animal of the genus lama, commonly referred to as a "one llama", including llamas, alpacas, guanacos, and vicunas.
- (f.2) "Llama activity" means:
- (I) Llama shows, fairs, competitions, performances, packing events, or parades that involve any or all breeds of llamas;
- (II) Using llamas to pull carts or to carry packs or other items;
- (III) Using llamas to pull travois-type carriers during rescue or emergency situations;
- (IV) Llama training or teaching activities or both;
- (V) Taking llamas on public relations trips or visits to schools or nursing homes;

- (VI) Participating in commercial packing trips in which participants pay a llama professional to be a guide on a hike leading llamas;
- (VII) Boarding Ilamas;
- (VIII) Riding, inspecting, or evaluating a llama belonging to another, whether or not the owner has received some monetary consideration or other thing of value for the use of the llama or is permitting a prospective purchaser of the llama to ride, inspect, or evaluate the llama;
- (IX) Using llamas in wool production;
- (X) Rides, trips, or other llama activities of any type however informal or impromptu that are sponsored by a llama activity sponsor; and
- (XI) Trimming the nails of a llama.
- (f.3) "Llama activity sponsor" means 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, a llama activity, including but not limited to: Llama clubs, 4-H clubs, hunt clubs, riding clubs, school and college-sponsored classes, programs and activities, therapeutic riding programs, and operators, instructors, and promoters of llama facilities, including but not limited to stables, clubhouses, fairs, and arenas at which the activity is held.
- (f.4) "Llama professional" means a person engaged for compensation:
- (I) In instructing a participant or renting to a participant a llama for the purpose of riding, driving, or being a passenger upon the llama; or
- (II) In renting equipment or tack to a participant.
- (g) "Participant" means any person, whether amateur or professional, who engages in an **equine** activity or who engages in a llama activity, whether or not a fee is paid to participate in such activity.
- (3) Except as provided in subsection (4) of this section, an **equine** activity sponsor, an **equine** professional, a llama activity sponsor, a llama professional, a doctor of veterinary medicine, 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, or from the inherent risks of llama 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 llama activity sponsor, a llama professional, a doctor of veterinary medicine, or any other person for injury, loss, damage, or death of the participant resulting from any of the inherent risks of llama activities.
- (4)(a) This section shall not apply to the horse racing industry as regulated in article 60 of title 12, C.R.S.
- (b) Nothing in subsection (3) of this section shall prevent or limit the liability of an **equine** activity sponsor, an **equine** professional, a llama activity sponsor, a llama professional, or any other person if the **equine** activity sponsor, **equine** professional, llama activity sponsor, llama professional, or person:
- (I)(A) 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; or
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- (B) Provided 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 llama activity and determine the ability of the participant to safely manage the particular animal based on the participant's representations of his 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 to the **equine** activity sponsor, **equine** professional, llama activity sponsor, llama 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.
- (c) Nothing in subsection (3) of this section shall prevent or limit the liability of an **equine** activity sponsor, **equine** professional, llama activity sponsor, or llama professional:
- (I) Under liability provisions as set forth in the products liability laws; or
- (II) Under liability provisions in section 35-46-102, C.R.S.
- (5)(a) Every **equine** professional shall post and maintain signs which contain the warning notice specified in paragraph (b) of this subsection (5). Such signs shall be placed in a clearly visible location on or near stables, corrals, or arenas where the **equine** professional conducts **equine** activities if such stables, corrals, or arenas are owned, managed, or controlled by the **equine** professional. The warning notice specified in paragraph (b) of this subsection (5) shall appear on the sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by an **equine** professional for the providing of professional services, instruction, or the rental of equipment or tack or an **equine** to a participant, whether or not the contract involves **equine** activities on or off the location or site of the **equine** professional's business, shall contain in clearly readable print the warning notice specified in paragraph (b) of this subsection (5).
- (b) The signs and contracts described in paragraph (a) of this subsection (5) shall contain the following warning notice:

#### WARNING

Under Colorado 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 section 13-21-119, Colorado Revised Statutes.

- (6)(a) Every llama professional shall post and maintain signs which contain the warning notice specified in paragraph (b) of this subsection (6). Such signs shall be placed in a clearly visible location on or near stables, corrals, pens, or arenas where the llama professional conducts llama activities if such stables, corrals, pens, or arenas are owned, managed, or controlled by the llama professional. The warning notice specified in paragraph (b) of this subsection (6) shall appear on the sign in black letters, with each letter to be a minimum of one inch in height. Every written contract entered into by a llama professional for the providing of professional services, instruction, or the rental of equipment or tack or a llama to a participant, whether or not the contract involves llama activities on or off the location or site of the llama professional's business, shall contain in clearly readable print the warning notice specified in paragraph (b) of this subsection (6).
- (b) The signs and contracts described in paragraph (a) of this subsection (6) shall contain the following warning

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notice:

#### WARNING

Under Colorado Law, a llama professional is not liable for an injury to or the death of a participant in llama activities resulting from the inherent risks of llama activities, pursuant to section 13-21-119, Colorado Revised Statutes.

#### CREDIT(S)

Added by Laws 1990, S.B.90-84, § 1, eff. July 1, 1990. Amended by Laws 1992, H.B.92-1064, § 1, eff. March 16, 1992; Laws 1992, S.B.92-58, § 1, eff. April 9, 1992.

#### HISTORICAL AND STATUTORY NOTES

2005 Main Volume

Laws 1990, S.B.90-84, § 2, provides:

"Effective date--applicability. This act shall take effect July 1, 1990, and shall apply only to causes of action filed on or after said date."

Laws 1992, H.B.92-1064, § 1, inserted the provisions relating to llamas and llama activities throughout the section.

Laws 1992, S.B.92-58, § 1, in subsec. (3), inserted "a doctor of veterinary medicine" in two places.

#### LAW REVIEW AND JOURNAL COMMENTARIES

Dog owners v. horseback riders: An analysis of the dog worrying livestock and **equine** activity statutes. Dan S. Shipp and Craig L. Feldman, 47-Feb. Trial Talk 13 (1998).

Recreational Use of Agricultural Lands. Richard H. Krohn, 23 Colo.Law. 529 (1994).

#### LIBRARY REFERENCES

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Animals \$\infty\$66, 111.

Westlaw Topic No. 28.

C.J.S. Animals \$\\$ 170 to 193, 198 to 232, 285, 290, 348.1 to 348.6.

#### RESEARCH REFERENCES

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#### **ALR Library**

6 ALR 4th 358, Liability of Owner or Bailor of Horse for Injury by Horse to Hirer or Bailee Thereof.

#### Encyclopedias

- 25 Am. Jur. Proof of Facts 2d 461, Failure to Use Due Care in Providing Horse for Hire.
- 30 Am. Jur. Proof of Facts 3d 161, Assumption of Risk Defense in Sports or Recreation Injury Cases.
- 33 Am. Jur. Proof of Facts 3d 421, Avoiding the Effect of a Recreational Activity Liability Release.

#### **Treatises and Practice Aids**

- 1C Colorado Practice Series § 55.1, Introduction.
- 5A Colorado Practice Series App. E § 13-21-119, **Equine** Activities-Llama Activities-Legislative Declaration-Exemption from Civil Liability.
- 7 Colorado Practice Series § 10.35, Statutes that Affect Duty.
- 7 Colorado Practice Series § 13.3, Exculpatory Agreements.
- 7 Colorado Practice Series § 13.41, Statutory Defenses in Colorado-Equine Activities.
- 7 Colorado Practice Series § 13.42, Statutory Defenses in Colorado-Other Defenses.
- 7 Colorado Practice Series § 19.25, Equine Activities.
- 8 Colorado Practice Series App. C, Appendix C. Colorado Statutes Affecting Personal Injury Litigation.

#### NOTES OF DECISIONS

Construction and application 1 Exculpatory agreement 3 Immunity 4 Purpose 2

#### 1. Construction and application

Equine activities immunity statute is inconsistent with the former duties of an equine professional under the common law. Fielder v. Academy Riding Stables, App.2002, 49 P.3d 349, certiorari denied. Animals 67

Appellate court must apply a strict construction to grant of immunity in **equine** activities statute. Fielder v. Academy Riding Stables, App.2002, 49 P.3d 349, certiorari denied. Animals 57

#### 2. Purpose

Equine activity immunity statute seeks to encourage equine activities and to limit civil liability of those involved in such activities. Culver v. Samuels, App.2001, 37 P.3d 535. Animals 67

#### 3. Exculpatory agreement

Exculpatory agreement that plaintiff signed when she rented horse from defendant's livery was ambiguous, in that it provided that plaintiff voluntarily released defendant from any liability in event of any injury, but also provided that plaintiff had been advised that equine professionals are not liable for injury or death resulting from "inherent risks of equine activities"; thus, because plaintiff, an inexperienced rider, alleged that defendant provided faulty

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gear or equipment, and because risk of such equipment was not risk inherent in **equine** activities, exculpatory agreement did not bar her claim. Riehl v. B & B Livery, Inc., App.1997, 944 P.2d 642, rehearing denied, certiorari granted, reversed 960 P.2d 134. Theaters And Shows  $\iff$  6(6)

Exculpatory agreement does not provide shield against claim for willful and wanton negligence. Riehl v. B & B Livery, Inc., App.1997, 944 P.2d 642, rehearing denied, certiorari granted, reversed 960 P.2d 134. Contracts

#### 4. Immunity

Wranglers' negligence in failing to remove terrified 11-year-old girl from horse while on guided tour was not "inherent risk of **equine** activities" within meaning of **equine** activities statute, which granted immunity from liability for injuries to persons and entities involved in **equine** activities. Fielder v. Academy Riding Stables, App.2002, 49 P.3d 349, certiorari denied. Animals \$\infty\$ 67

Immunity granted in the **equine** activities statute is limited to injuries resulting from the inherent risks of **equine** activities. Fielder v. Academy Riding Stables, App.2002, 49 P.3d 349, certiorari denied. Animals 676 67

Horse owner was "any other person," within meaning of **equine** activity immunity statute, and thus, statute protected owner from liability for rider's personal injuries sustained when he was thrown off owner's horse, where owner was a rider and member of roping club, and the alleged negligence did not fall within any of the statutory exceptions. Culver v. Samuels, App.2001, 37 P.3d 535. Animals 67

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Current through Chapter 116 of the First Regular Session of the 65th General Assembly.

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7 Colo. Prac., Personal Injury Torts And Insurance § 13.41 (2d ed.) (TREATISE)

# West's Colorado Practice Series TM Personal Injury Practice--Torts And Insurance Updated By The 2004 Pocket Part John W. Grund FNa, J. Kent Miller FNb, Graden P. Jackson FNc

Chapter 13. Negligence: Defenses

§ 13.41 Statutory Defenses in Colorado--Equine Activities

Link to Pocket Part

The equestrian statute provides a statutory defense to equine professionals for negligent conduct because of the inherent risks involved with equine activities. FN1 This standard also applies to the equipment or tack used in the activity. FN2 Even where an exculpatory agreement is signed, a stable is not exempt from liability for willful and wanton negligence. FN3

Library References:

C.J.S. Contracts § 262; Entertainment and Amusement; Sports § 56.

West's Key No. Digests, Contracts € 114; Theaters and Shows € 6(6).

#### **Pocket Part**

The immunity under the statute is limited to injuries that result from the inherent risks of equine activities, but not to accidents that are caused by wranglers' negligence as opposed to any such inherent risk. FN4 Where a tour rider was injured when his horse was struck by the horse of a young girl that was spooked by her persistent and loud screaming, even though the wranglers may have fulfilled their statutory obligation initially by matching the young girl with a horse suitable for inexperienced riders, the immunity was not available when wranglers failed to recognize in the course of the ride that the young girl was terrified of riding any horse, but allowed her to continue to do so. FN5

FNa Member Of The Colorado Bar.

FNb Member Of The Colorado Bar.

FNc Member Of The Colorado Bar.

FN1 West's C.R.S.A. § 13-21-119.

Pocket Part FN: FN1 Culver v. Samuels, 37 P.3d 535 (Colo.App. 2001).

FN2 Day v. Snowmass Stables, Inc., 810 F.Supp. 289 (D.Colo.1993).

7 COPRAC § 13.41

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7 Colo. Prac., Personal Injury Torts And Insurance § 13.41 (2d ed.) (TREATISE)

FN3 B & B Livery, Inc. v. Riehl, 960 P.2d 134 (Colo.1998).

Pocket Part FN: FN4 Fielder v. Academy Riding Stables, 49 P.3d 349 (Colo.App.), cert. denied (2002).

Pocket Part FN: FN5 Fielder v. Academy Riding Stables, 49 P.3d 349 (Colo.App.), cert. denied (2002).

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7 Colo. Prac., Personal Injury Torts And Insurance § 19.25 (2d ed.) (TREATISE)

## West's Colorado Practice Series TM Personal Injury Practice--Torts And Insurance John W. Grund FNa, J. Kent Miller FNb, Graden P. Jackson FNc

#### Chapter 19. Premises Liability

#### § 19.25 Equine Activities

Effective July 1, 1990, businesses that rent horses to others and sponsors of equine activities such as horse shows will be exempt from liability for injury or death caused by the animal. FN1 The statute exempts the sponsor or owner from liability for injury resulting from "inherent risks of equine activities." Inherent risks of equine activities are defined at length in the statute.

The exemption from liability does not apply to the horse racing industry nor does it limit liability if the owner or sponsor knowingly provides defective equipment or fails to make reasonable efforts to determine the ability of the rider. FN2 Also excluded from this exemption from liability are injuries sustained because of dangerous latent conditions of the land or facility (unless a warning sign has been conspicuously posted), willful or wanton disregard for the safety of the participant resulting in injury, and intentional injuries to the rider. The statute does not affect claims arising under the Products Liability Act FN3 or fence law. FN4

The statute requires that horse owners who rent out their animals post a warning sign of this statutory limit on liability, and prescribes the required language and dimensions for the sign. FN5 The statute also requires that written contracts contain the requisite warning. Presumably the failure to post the required warning in a contract will result in liability. FN6

Library References:

C.J.S. Entertainment and Amusement; Sports § 56.

West's Key No. Digests, Theaters and Shows € 6(6).

FNa Member Of The Colorado Bar.

FNb Member Of The Colorado Bar.

FNc Member Of The Colorado Bar.

FN1 West's C.R.S.A. § 13-21-120.

FN2 West's C.R.S.A. § 13-21-119.

FN3 West's C.R.S.A. §§ 13-21-401 to 13-21-406.

FN4 West's C.R.S.A. § 35-46-102 (providing for recovery of damages to grass, garden, or vegetable products

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7 Colo. Prac., Personal Injury Torts And Insurance § 19.25 (2d ed.) (TREATISE)

caused by livestock that break through a fence).

FN5 West's C.R.S.A. § 13-21-119.

FN6 See, e.g., West's C.R.S.A. § 13-80-105 (surveyor's statute of repose mentioned upon specific notice printed on survey).

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Monday, June 27, 2005

#### **Equestrian Land Conservation**

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#### These Laws Are on Your Side

By Elizabeth Clarke

In an ongoing survey by the Equestrian Land Conservation Resource concerns about liability a second only to development as a reason that equestrians are losing access to open space. Some concern about liability may be unwarranted, at least in some states. There are two categories of affect liability for injuries or damage incurred by equestrians. They are written specifically to adliability concerns around horses, and to insure that equestrians and other recreational users con have access to open space.

Most equestrians know about laws limiting the liability of equine professionals and event organ commonly referred to as Equine Limited Liability Laws. Unfortunately there is much misinforr about what these laws actually do and don't do.

They are designed to limit the liability of equine professionals, event organizers, and in some ca amateurs, in case of injury or death resulting from the risks **inherent** in participating in equestr activities. The words "inherent in" are important. These laws do not provide protection against for risks created or increased by humans, such as loaning someone faulty tack or putting him or without knowing he has the capability of handling it safely. These laws are not designed to prot someone from acting without due care. They are designed to address the fact that horses can re unpredictably to stimulus, and can hurt people in the process, even if everyone is careful.

Not all states have adopted equine limited liability laws. Those that have follow a general patter there are significant variations among the statutes that are in effect. For instance, some states so injured party cannot even maintain an action (bring a sustainable lawsuit) while others simply consultable presumption of no negligence.

In the latter instance the plaintiff has to prove negligence, which means a lawsuit. Since there is liability in the great majority of personal injury cases without proving at least negligence, this se version doesn't add much protection. Most equine limited liability laws exclude racing activities protection of the statute, almost all require posting of very specifically worded notices, and son the execution of a release form. The Indiana law says that if any related written contract fails to the required wording, the protection of the statute does not apply. Illinois puts very specific bu responsibilities on the person using the horse, going further than most other states in that parti aspect.

Because there is no uniformity among the various state laws, equestrians need to educate thems to the terms of the law in their state. It would be a real shame to loose the protection of a limit liability law because of failure to take a simple step required in the law.

Lest you think that these laws only apply to commercial stables or professional instructors, reac state's statute carefully. In many states the sponsor of an equine activity may be an individual, a is no requirement that the participant pay to participate in the activity, so lending your buddy a go on a trail ride with you, or even lending him a saddle to use on his own horse may put you v terms of the statute. In other states the protection is more clearly limited to professionals.

The second category of law affecting equestrians and liability, recreational use laws, aims to ma access to private lands for recreational users of various types by protecting the land owners. Re use laws accomplish this by relieving landowners of the burdens that are imposed by the usual duties to licensees and invited guests.

Recreational use laws provide that a landowner allowing others to use his land for recreational j does not have a duty to make or keep the land safe or to warn of unsafe conditions. This chang traditional legal duty reduces the landowner's inspection and maintenance obligations and his p liability, making it easier and financially safer for him to open his land for recreational use. It pt burden on the users to exercise care and watch for dangerous conditions; a burden worth beari incentive it provides the landowner.

It is important to note that recreational use laws usually apply only where there is no charge for access. Where there is an admission charge, the regular rules regarding the duties of the landow and the standard of care is increased significantly.

Recreational use laws don't change a landowner's liability for willful or malicious failure to warr dangerous condition. Many recreational use laws state that they don't change a landowner's dut regard to "attractive nuisance," dangerous conditions that might attract children who would no understand the danger. Recreational use laws are somewhat more uniform than the equine limit liability laws, and more states have adopted them, but as with equine limited liability laws there differences among the states. It is important to do your homework as to what the terms and co are in your state.

Where to look? There is an excellent web site maintained by the American Association for Horsemanship Safety, Inc. which lists the texts of both equine limited liability statutes (they call equine activity statutes) and recreational use statutes by state. They can be found at . If you dor Internet access, your state horse council, extension service or county law library can also usually information about these laws. Remember that court interpretations of the laws will affect how applied in your state, so it is important to look into the related court decisions as well.

If you live in a state with either or both an equine limited liability law and a recreational use law sure you meet the requirements as they apply to you. It is silly to give up the significant financia protection the law affords by failing to hang a sign or use the required language in a release. If y equestrian encountering resistance by landowners based on their liability concerns, providing the

a copy of the state recreational use law may help assuage their concerns.

In this day of decreasing availability to open lands, we need to use the tools available to protect access to what is left. Equine limited liability laws and recreational use laws are designed to ensu those opportunities that do remain need not be shut down due to concerns about liability.

\* \* \* \* \*

Elizabeth Clarke provides business and risk management consulting for horse related businesses as well as mediarbitration of horse related disputes. She can be reached at P.O. Box 3, Severna park, MD 21146 or by e-maallowme@idt.net. If you have a specific matter on which you need legal advice, please consult a qualified profe

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#### **Briefs and Other Related Documents**

Supreme Court of Colorado, En Banc. Charles CHADWICK, Petitioner,

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COLT ROSS OUTFITTERS, INC., a Colorado Corporation, d/b/a Rocky Mountain Outfitters, Respondent. No. 03SC458.

Nov. 8, 2004.

Background: Participant in back-country hunting trip brought negligence action against organizer of trip, seeking to recover for injuries sustained when he was thrown off mule. The District Court, La Plata County, David L. Dickinson, J., granted organizer's motion for summary judgment on basis of release agreement. Participant appealed. The Court of Appeals, Carparelli, J., affirmed. Participant sought review.

Holdings: The Supreme Court, Coats, J., held that:

 exculpatory agreement released organizer from liability for injuries participant suffered, and
 agreement did not violate public policy.

Affirmed.

Hobbs, J., dissented and filed opinion.

#### West Headnotes

#### [1] Contracts \$\infty\$114

95k114 Most Cited Cases

In no event will an exculpatory agreement be permitted to shield against a claim of willful and wanton negligence.

#### [2] Contracts \$\infty\$ 114

95k114 Most Cited Cases

Although an exculpatory agreement that attempts to insulate a party from liability for his own simple negligence is disfavored, it is not necessarily void as against public policy, as long as one party is not at such obvious disadvantage in bargaining power that the effect of the contract is to put him at the mercy of the other's negligence.

#### [3] Contracts 114

95k114 Most Cited Cases

In determining the validity of exculpatory agreements, they must be closely scrutinized to ensure that the intent of the parties is expressed in clear and unambiguous language and that the circumstances and the nature of the service involved indicate that the contract was fairly entered into.

#### [4] Contracts \$\infty\$ 189

95k189 Most Cited Cases

#### [4] Contracts \$\infty\$ 205.30

95k205.30 Most Cited Cases

Specific terms "negligence" and "breach of warranty" are not invariably required for an exculpatory agreement to shield a party from claims based on negligence and breach of warranty.

#### [5] Contracts € 114

95k114 Most Cited Cases

Even if the intent of the parties is unambiguously expressed in a release agreement, agreement may still violate public policy if it involves a service that the defendant is obligated to provide for the public or was entered into in an unfair manner.

#### [6] Contracts \$\infty\$ 114

95k114 Most Cited Cases

Exculpatory agreements which will be barred for affecting the public interest generally involve businesses suitable for public regulation; that are engaged in performing a public service of great

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importance, or even of practical necessity; that offer a service that is generally available to any members of the public who seek it; and that possess a decisive advantage of bargaining strength, enabling them to confront the public with a standardized adhesion contract of exculpation.

## [7] Public Amusement and Entertainment

315Tk130 Most Cited Cases

(Formerly 376k6(6) Theaters and Shows)

Exculpatory agreement released organizer of back-country hunting trip from liability for injuries participant suffered when thrown from a mule, even if those injuries resulted from organizer's negligence; agreement clearly and unambiguously expressed intent of parties to release organizer from all liability for injuries resulting from trip.

#### [8] Public Amusement and Entertainment 130

315Tk130 Most Cited Cases

(Formerly 376k6(6) Theaters and Shows)

Exculpatory agreement releasing organizer of back-country hunting trip from all liability for injuries resulting from trip did not violate public policy to the extent it was not offered as a release from willful negligence, where participant signed agreement more than ten months before trip, and admitted that he read the agreement and understood that he was signing a release of liability; agreement was not entered into in an unfair manner, and did not involve a service that was publicly regulated or of great public importance.

\*466 Michael E. McLachlan, Marla C. Underell, Durango, for Petitioner.

Casey & Seibert, LLC, James A. Casey, Durango, for Respondent.

Mark N. Williams, P.C., Mark N. Williams, Grand Junction, for Amicus Curiae Colorado Outfitters Association.

COATS, Justice.

Charles Chadwick, the plaintiff in the underlying personal injury action, sought review of the court of appeals unpublished opinion affirming summary judgment for the defendant, Colt Ross Outfitters. The district court found that an exculpatory agreement executed by Chadwick validly released Colt Ross from liability for the injuries Chadwick suffered during a hunting expedition, even if those injuries resulted from the Outfitter's negligence. The court of appeals affirmed, upholding the applicability and validity of the exculpatory agreement, after determining that it unambiguously expressed the intent of the parties and did not violate public policy. Because the agreement executed by Chadwick and Colt Ross Outfitters does unambiguously express the parties' intent to release Colt Ross from liability for Chadwick's injuries, and because it is not otherwise void as against public policy, the judgment of the court of appeals is affirmed.

The suit arises from an incident that occurred during a hunting expedition, guided by Colt Ross Outfitters, Inc., in which Charles Chadwick was thrown from a mule and sustained severe injuries. Chadwick sued Colt Ross for negligently failing to supervise the hunt and, in particular, for failing to provide the proper equipment to secure his saddle. After unsuccessfully moving to dismiss, Colt Ross moved for summary judgment on the basis of a release provision included in the contract of the parties.

Chadwick, a resident of Texas, asserted in his pleadings that he contracted for and participated in an elk hunt organized by Colt Ross, a Colorado corporation engaged in the business of organizing, guiding, and supervising back-country hunting trips. Chadwick further asserted that several days after the hunt began, and well after he had complained that the horse assigned to him was ill, the wrangler removed the saddle from Chadwick's horse and placed it on one of the pack mules, instructing Chadwick to ride the mule for the rest of the trip. That same day, while Chadwick and a companion hunted without immediate supervision, the saddle began to slide down the mule's neck. When Chadwick attempted to dismount, the mule bucked, throwing him down a hill and causing serious

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injuries, including several fractures in his neck.

Colt Ross denied many of the allegations of the complaint but also asserted as a defense that Chadwick's claims were barred by the release agreement he signed before embarking on the hunt. In a motion for summary judgment, Colt Ross therefore asserted that the issues of fact disputed by the parties were not material to Chadwick's claims for relief. In granting the motion and dismissing the lawsuit, the district court found that the release agreement of the parties clearly and unambiguously expressed their intent to release the defendant from all claims for injury associated with the agreed-to hunting trip, and that Chadwick expressly acknowledged his understanding that he would be permitted to participate only if he agreed to this condition. The district court also rejected Chadwick's claim that in light of legislative regulation, public policy barred release of the Outfitter from liability for any but the inherent risks of equine activities and that, in any event, the agreement was inapplicable to injuries caused while Chadwick was riding a mule, rather than a horse.

The court of appeals affirmed. Relying on previous holdings of this court involving recreational activities, and particularly equine activities, the appellate court found that the release agreement was not void as against \*467 public policy. It held that the language of the agreement reflected a clear and unambiguous intent to release the Outfitter from all liability for any injury resulting from Chadwick's participation in activities of the guided hunt; that the agreement contained the warnings expressly required by section 13-21-119, 5 C.R.S. (2003); and that riding a mule fell within the statutory definition of equine activities, as well as the broad language of the agreement concerning the use of animals while participating in the activities of the hunt.

Chadwick petitioned for a writ of certiorari.

[1][2][3] In no event will an exculpatory agreement be permitted to shield against a claim of willful and wanton negligence. Jones v. Dressel, 623 P.2d 370,

Although 376 (Colo.1981). an exculpatory agreement that attempts to insulate a party from liability for his own simple negligence is also disfavored, it is not necessarily void as against the public policy of this jurisdiction, "as long as one party is not 'at such obvious disadvantage in bargaining power that the effect of the contract is to put him at the mercy of the other's negligence.' " See Heil Valley Ranch v. Simkin, 784 P.2d 781, 784 (Colo.1989) (citation omitted); Jones, 623 P.2d at 376. In determining the validity of such agreements, we have held that they must be closely scrutinized to ensure that the intent of the parties is expressed in clear and unambiguous language and that the circumstances and the nature of the service involved indicate that the contract was fairly

entered into. Id.

[4] To determine whether the intent of the parties is clearly and unambiguously expressed, we have previously examined the actual language of the for legal jargon, length agreement complication, and any likelihood of confusion or failure of a party to recognize the full extent of the release provisions. See Heil, 784 P.2d at 785. We have even taken into account an injured party's subsequent acknowledgment that he understood the meaning of the provision, See Heil, 784 P.2d at 785; cf. B & B Livery, Inc. v. Riehl, 960 P.2d 134, 138 (Colo.1998) (finding a release agreement valid where plaintiff admitted awareness that she was signing a release without reading it). Although the agreement must be clear, unambiguous, and unequivocal, we have also made clear that the specific terms "negligence" and "breach of warranty" are not invariably required for an exculpatory agreement to shield a party from claims based on negligence and breach of warranty. Heil, 784 P.2d at 785.

[5][6] Even if the intent of the parties is unambiguously expressed in the contract, however, a release agreement may still violate public policy if it involves a service that the defendant is obligated to provide for the public or was entered into in an unfair manner. Jones, 623 P.2d at 376. Although we have not specified the precise circumstances in which a release agreement will be barred for

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affecting the public interest, we have noted that such agreements generally involve businesses suitable for public regulation; that are engaged in performing a public service of great importance, or even of practical necessity; that offer a service that is generally available to any members of the public who seek it; and that possess a decisive advantage of bargaining strength, enabling them to confront the public with a standardized adhesion contract of exculpation. See id. (quoting favorably from Tunkl v. Regents of the Univ. of Cal., 60 Cal.2d 92, 32 Cal.Rptr. 33, 383 P.2d 441, 444-46 (1963)). From this class of businesses, however, we have previously distinguished businesses engaged in recreational activities, which are not practically necessary and with regard to which the provider owes no special duty to the public. See, e.g., Jones, 623 P.2d at 377; Barker v. Colo. Region-Sports Car Club of Am., Inc., 35 Colo.App. 73, 79-80, 532 P.2d 372, 377 (1974).

In particular, we have previously considered recreational endeavors involving equine activities and have upheld broad exculpatory agreements in contracts related to such activities. See, e.g., B & B Livery, 960 P.2d 134; Heil, 784 P.2d 781. After our judgment in Heil, the General Assembly enacted section 13-21-119, limiting the civil liability of those involved in, among other things, equine \*468 activities. See B & B Livery, 960 P.2d 134. Apart from imposing a general requirement to give notice of the inherent risks to be assumed by a participant, see § 13-21-119(5)(a)-(b), [FN1] the legislature has, however, done nothing to regulate equine activities or to impose additional duties on equine activity sponsors. Rather, the statute recognizes the inherent risks involved in equine activities and protects sponsors of equine activities by limiting their liability, except under specified circumstances. See § 13-21-119(4)(b). The statute itself imposes no liability on the sponsors for injuries beyond those for which liability is specifically limited, and this court has made clear that parties may, consistent with the statute, contract separately to release sponsors even from negligent conduct, as long as the intent of the parties is clearly expressed in the contract. See B & B Livery, 960 P.2d at 138.

FN1. Subsections (5)(a) and (b) require the following warning notice:

#### WARNING

Under Colorado 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 section 13-21-119, Colorado Revised Statutes.

#### III.

[7] The contract between Chadwick and Colt Ross was entitled, "Fully Guided Hunt Contract of Agreement." Its terms indicate that the sponsor agrees to provide the participant with a hunt, including a horse for each client, and that the participant agrees to assume the risk of "any activity associated with the type of trip agreed to." It contains a separately enumerated, emboldened section entitled, "Disclosures, Disclaimers and Waivers." Included among the enumerated risks and dangers of the "described sport or activity" is the "use of animals," accompanied by the warning that "[s]hould animals ever be used or are present as part of our activities, ... an animal ... may act or react unpredictably at times based upon instinct or fright which likewise is and [sic] inherent risk to be assumed by each participant." In addition to the statutorily required warning that the Outfitter will not be liable for injury or death resulting from "inherent risks" of equine activities, this section includes a separately enumerated clause indicating capital, emboldened letters Chadwick's agreement to "RELEASE FROM ANY LEGAL LIABILITY ... the Outfitter ... for any injury or death caused by or resulting from [his] participation in the activities described." The words, "THIS IS A RELEASE OF LIABILITY," appear in capital, emboldened letters just above Chadwick's signature.

The organization of the contract and the placement of this release language make it unrealistic that these provisions could be missed or misunderstood by the reader. The release provision is not inordinately long. It is uncomplicated and free from legal jargon. Separate from, and in sharp contrast to, the statutorily required notice of the inherent risks assumed by Chadwick upon participating in

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equine activities generally, the release agreement specifies that "[a]s [1]awful [c]onsideration for" being permitted to participate in the guided hunt, Chadwick also releases the Outfitter from "any legal liability." While this agreement, like the agreement in Heil, never uses the word "negligence," the language in which it expresses itself cannot reasonably be understood as expressing anything other than an intent to release from "any" liability for injuries "caused by or resulting from" Chadwick's "participation" in the contracted-for hunting expedition.

In fact, the release agreement in this case is so unambiguously broad that, on its face, it includes a release from even willful and wanton negligence. Enforcing a release from willful negligence would clearly not be consistent with public policy; however, rather than rendering the entire agreement void, similarly broad language has, in the past, been construed to extend only as far as would be consistent with public policy. See B & B Livery, 960 P.2d at 138-39 (reading language that protected the defendant "from any liability in the event of any injury or damage of any nature" as shielding against negligence claims but remanding for further proceedings concerning the plaintiff's willful and wanton/gross negligence claims); Barker, 35 Colo.App. at 82-83, 532 P.2d at 378-79 (enforcing \*469 an exculpatory agreement to prevent recovery for injuries caused by the simple negligence of two defendants, but permitting a claim for another defendant's willful and wanton negligence to stand); see also Murphy v. N. Am. River Runners, Inc., 186 W.Va. 310, 412 S.E.2d 504, 511 (1991) (declaring that an exculpatory clause releasing the defendant "from all liability for any future loss" applies only to simple negligence and will not be construed to release the defendant from injury resulting from intentional or reckless misconduct).

Nor can the contract reasonably be understood--as Chadwick intended, according to his deposition--to make the release provisions effective only upon satisfactory fulfillment by the Outfitter of its contractual obligations. Nothing in the contract suggests that the release agreement is in any way contingent. To the contrary, the contract spells out

the client's available remedies for breach by the Outfitter, which are limited to return of a pro rata portion of his fee. Furthermore, such an interpretation would provide the Outfitter with virtually no protection and would render the release essentially meaningless. It therefore could not be considered a reasonable interpretation. See Heil, 784 P.2d at 785.

The applicability of the release agreement is therefore limited to the question whether Chadwick was injured while participating in the activities described in the contract. Whether or not a failure to properly supervise or to provide Chadwick a riding horse on the day in question could amount to a breach by the Outfitter under these circumstances, neither eventuality could alter the fact that Chadwick was injured while participating in the guided hunt that was the subject of the contract, or activities associated with it. The very basis of Chadwick's lawsuit is that he was injured while using equipment and riding an animal provided by Colt Ross, in the wilderness, on a hunting expedition organized, supervised, and guided by Colt Ross and its employee. Chadwick's express assumption of the risk of "any activity associated with the type of trip agreed to" can hardly be understood to be inapplicable for the reason that he was hunting on a mule at the time of his injuries.

[8] Although perhaps too broad on its face, the release in this case unambiguously contemplated release from at least the simple negligence of the Outfitter, and as applied to Chadwick's allegations of negligence, the contract was therefore not necessarily void as against public policy. [FN2] Furthermore, apart from falling within the statutory immunity provisions governing equine activities, [FN3] riding a mule during the guided hunt provided by Colt Ross was clearly an activity "associated with the type of trip agreed to," with regard to which Chadwick assumed all risks of injury.

> FN2. Although language in the complaint could be interpreted to separately allege willful and wanton negligence, Chadwick has not challenged the court of appeals

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judgment, affirming dismissal of the entire lawsuit, on this ground.

FN3. "'Equine' means a horse, pony, mule, donkey, or hinny." § 13-21-119(2)(b).

Finally, the contract does not fail for other policy reasons. There was no indication that the contract was unfairly entered into. It was delivered to Chadwick in Texas and was signed by him in his home more than ten months before the trip. There is no suggestion that Chadwick is not competent and educated; his initials appear in the blank spaces after each clause of the "Disclosures, Disclaimers and Waivers" section of the contract; and he admitted in his deposition that he read the contract and understood that he was executing a release of liability when he signed it. Moreover, the Outfitter had no duty to the public that would be violated by the release agreement. Like the skydiving company in Jones, Colt Ross provides a recreational service, neither publicly regulated nor of great public importance, and therefore the contract between Chadwick and Colt Ross "does not fall within the category of agreements affecting the public interest." Jones, 623 P.2d at 377.

#### IV

Because the contract executed by Chadwick and Colt Ross Outfitters clearly and \*470 unambiguously expresses the intent of the parties to release Colt Ross from all liability for injuries resulting from the contracted-for hunt, and does not otherwise violate public policy, we affirm the judgment of the court of appeals.

Justice HOBBS dissents.

Justice KOURLIS does not participate.

Justice HOBBS dissenting:

I respectfully dissent. The majority holds that the agreement Chadwick signed for an outfitted, horseback elk hunt released Colt Ross from any liability for the severe injuries caused him. In reaching this result, the majority finds that the liability release provisions of the agreement

unambiguously exculpate Colt Ross from all acts of negligence it committed in the course of causing Chadwick's injuries.

I disagree. Properly construed in light of the applicable law, the release language, in my view, did not validly put Chadwick on notice that he was waiving the statutory duty of care the Colorado General Assembly placed on Colt Ross to supply proper tack for the mule the outfitter provided Chadwick when his horse became sick. The contract and release did not clearly and adequately specify that it applied to any animal other than a horse, which had been guaranteed to Chadwick by the contract for the duration of the trip.

Section 13-21-119 immunizes an outfitter from liability for injuries resulting from the inherent risks of equine activities, see section 13-21- 119(3), C.R.S. (2004), but excludes from this immunity certain types of negligent behavior of an equine professional. See § 13-21-119(4). Specifically, supplying faulty riding equipment is not immunized; outfitters are required to use tack designed for the animal assigned the rider. See § 13-21-119(4)(b)(I)(A). Here, the release language did not sufficiently notify Chadwick that he was releasing liability for negligence relating to the failure to provide the proper tack for riding any animal other than a horse.

The facts of this case are particularly egregious. Chadwick, a Texas resident, contracted for an outfitted, horseback elk hunt into the Colorado wilderness. According to Chadwick's allegations, when Chadwick's assigned horse became sick during the course of the journey, those responsible for his safety required him to ride a pack mule improperly equipped with a horse saddle. The horse saddle did not contain either a breast collar or a croupier, which are required for safely riding a mule. Not designed for a mule, the horse saddle was slipping off the animal when Chadwick attempted to dismount and was thrown, sustaining great injury that included multiple neck fractures. A mule saddle had been available, but a Colt Ross employee continued to use it rather than offering it to Chadwick.

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In choosing to jeopardize the safety of its client, Colt Ross violated both the specific terms of its agreement with Chadwick and section 13-21-119(4)(b)(I)(A) it's duty to provide an animal properly equipped for riding. Instead of making its client whole, Colt Ross claims Chadwick should have known the release he was signing excused it from supplying a properly equipped mule for riding.

We have recognized that a written agreement can release an outfitter of the obligation to comply with a duty of care, but such release must clearly and unambiguously put the client on notice that he or she is surrendering the right to hold the outfitter to that duty. B & B Livery, Inc. v. Riehl, 960 P.2d 134, 138 (Colo.1998); Heil Valley Ranch, Inc. v. Simkin, 784 P.2d 781, 784 (Colo.1990); Jones v. Dressel, 623 P.2d 370, 378 (Colo.1981).

Agreements that attempt to insulate a party from liability from negligence are disfavored and must be closely scrutinized. See Heil Valley Ranch, 784 P.2d at 783; Jones, 623 P.2d at 376. We construe an exculpatory agreement strictly against the drafter. See Heil Valley Ranch, 784 P.2d at 784. Our inquiry is contract-specific and focuses on "whether the intent of the parties was to extinguish liability and whether this intent was clearly and unambiguously expressed." Heil Valley Ranch, 784 P.2d at 785.

In determining whether an exculpatory release is valid, we consider four factors: (1) the existence of a duty to the public; (2) the \*471 nature of the service performed; (3) whether the contract was fairly entered into; and (4) whether the intention of the parties is expressed in clear and unambiguous language. B & B Livery, 960 P.2d at 136. As in B & B Livery, the fourth factor is at issue here. We must determine whether the parties' intent was to extinguish liability for Colt Ross's acts of negligence, and whether this intent was clearly and unambiguously expressed.

Three portions of the contract at issue here release Colt Ross of liability. The first two portions state:

1. The described sport or activity and all other hazards and exposures connected with the

activities conducted in the outdoors do involve risk and that I am cognizant of the risks and dangers inherent with camping and in particular in the mountains of Colorado, and that I and/or my family, including any minor children, are fully capable of participating in the activities contracted for and willingly assume the risk of injury as my responsibility, including loss of control or balance in walking or climbing, use of firearms, use of animals, weather, collisions with trees, rocks and other man-made or natural obstacles, whether they are obvious or not obvious.

2. Any route or activity, chosen as part of the Trip in which I and/or my family am participating may not be the safest but has or will be chosen for its interest, challenge or best meeting the goals of the services for which I am contracting. Should animals ever be used or are present as part of our activities, I and my family understand that an animal irrespective of its training and usual past behavior and characteristics, may act or react unpredictably at times based upon instinct or fright which likewise is an inherent risk to be assumed by each participant in the activity. WARNING-- Under Colorado 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 section 13-21-119, Colorado Revised Statutes. (emphasis added).

These two sections are directed at the inherent risks involved in equine activities, risks which were clearly noticed in the contract and which Chadwick accepted. However, these two sections do not address the possibility of Colt Ross breaching its duty of care in the course of outfitting and guiding the hunting trip; rather, the third section addresses this topic:

AS LAWFUL CONSIDERATION for being permitted by Outfitter to participate in the referenced activities, I do hereby RELEASE FROM ANY LEGAL LIABILITY, AGREE NOT TO SUE, CLAIM AGAINST, ATTACH THE PROPERTY OF OR PROSECUTE, AND FURTHER AGREE TO DEFEND, INDEMNIFY AND HOLD HARMLESS the

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Outfitter, the owner of leased private lands, the United States Forest Service or Parks Department, the BLM, any governmental agency whose property any activity scheduled may be required to utilize, and all of their officers, members, organizations, agents and employees for any injury or death caused by or resulting from my participation in the activities described above. Also to allow all use of photos, etc. for the use of advertisement, brochures, shows, etc. (emphasis added).

This section effectuates a general release of liability, but limits itself to injury or death caused by or resulting from "participation in the activities described above." The Contract of Agreement, set forth before the release language, specifically describes the contracted "activity" as including the duty of Colt Ross to provide "Riding horses for each client for the duration of the trip." Colt Ross breached this provision of the contract part of the way into the trip by assigning Chadwick a mule to ride.

The contract's "Disclosures, Disclaimers and Waivers" provisions do not provide any notice that Chadwick might be required to ride an animal other than a horse or that such an animal might not be outfitted properly with appropriate riding equipment. To the contrary, the plain, logical, and common sense reading of the general release is that Chadwick foregoes any and all claims for injury related to riding a horse on the trip.

\*472 Although Colt Ross argues that the release provisions cover all "animals," this term appears only in the first two provisions of the release, which pertain to the client's cognizance of the "risks and dangers *inherent* with ... the use of animals." The general release paragraph, on the other hand, refers back to the general contract wherein the activities are described as specifically including the riding of a horse.

As in *Heil Valley Ranch*, the contract here clearly states that the essential service the outfitter must provide is an outfitted hunt by horseback for the duration of the trip; the contract also clearly states

that the associated risk Chadwick accepts, and for which he waives liability, is any risk related to that service.

However, the risk to which Colt Ross exposed Chadwick by placing him on an incorrectly equipped mule is not clearly and unambiguously expressed in the release, and Chadwick did not waive that risk. Discharging our duty to construe the exculpatory provisions of the contract against their drafter and in favor of the injured client should lead this court to allow Chadwick's negligence action in this case.

is Section 13-21-119 a carefully-crafted combination of protections for both an outfitter and for participants in outdoor activities, recognizing that recreation is an important economic activity for the State of Colorado, its citizens, and visitors. See People v. Schafer, 946 P.2d 938, 944 (Colo.1997). Under contract principles, visitors and citizens of Colorado. with adequate disclosure, consciously contract away statutory and common law duties of care--but not willful and wanton or gross negligence--and may expose themselves to recreational risks without violating public policy. The release in this case, however, failed to disclose to Chadwick that he might be riding an animal other than a horse and that he would be waiving the outfitter's duty of care to properly equip that animal for riding.

I conclude that Colt Ross is not immunized from Chadwick's claim for damages in this case, either by the statute or the contract he signed. Accordingly, Colorado courts should hear his suit, and I respectfully dissent.

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## Briefs and Other Related Documents (Back to top)

- 2004 WL 1373784 (Appellate Brief) Reply Brief of Petitioner (Apr. 12, 2004)Original Image of this Document (PDF)
- 2004 WL 3257323 (Appellate Brief) Amicus

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Curiae Brief (Apr. 07, 2004)Original Image of this Document (PDF)

- 2004 WL 3257322 (Appellate Brief) Answer Brief (Mar. 29, 2004)Original Image of this Document (PDF)
- 2004 WL 2339304 (Appellate Petition, Motion and Filing) Petitioner's Brief (Mar. 01, 2004)Original Image of this Document (PDF)
- 2004 WL 3257321 (Appellate Brief) Petitioner's Brief (Feb. 27, 2004)Original Image of this Document (PDF)
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Colorado Court of Appeals, Div. IV. Byron C. FIELDER, Plaintiff-Appellee,

ACADEMY RIDING STABLES, Defendant-Appellant. No. 00CA2168.

Feb. 28, 2002. Certiorari Denied June 24, 2002. [FN\*]

FN\* Justice KOURLIS and Justice RICE would grant as to the following issues:

Did the Court of Appeals exceed its jurisdiction and err in judicially creating an exception to the exemption from liability conferred upon by the express provision of C.R.S. § 13-21-119?

Did the Court of Appeals err in holding that the injuries to Respondent were not caused by "inherent risks" of equine activity and thereby holding contrary to the specific factual findings of the District Court, which findings were supported by the record?

Horseback rider, who was thrown from his horse when it was hit by horse ridden by terrified 11-year-old girl, whose screaming had spooked her horse, brought action against stable. The District Court, El Paso County, Steven T. Pelican, J., found for rider, and stable appealed. The Court of Appeals, Ruland, J., held that wranglers' negligence in failing to remove terrified 11-year-old girl from horse while on guided tour was not "inherent risk of equine activities" within meaning of equine activities statute.

Affirmed.

West Headnotes

### [1] Appeal and Error \$\operator{842(1)}\$

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#### [1] Statutes \$\infty\$ 176

361k176 Most Cited Cases

Interpretation of a statute presents a question of law; therefore, the trial court's determination is subject to independent review by the appellate court.

#### [2] Statutes \$\infty\$ 181(1) 361k181(1) Most Cited Cases

#### [2] Statutes \$\infty\$ 188

361k188 Most Cited Cases

The primary goal in determining the meaning of a statute is to ascertain and give effect to the legislative intent by construing the words of the statute according to their plain and ordinary meaning.

#### [3] Animals ©= 67

28k67 Most Cited Cases

Equine activities immunity statute is inconsistent with the former duties of an equine professional under the common law. West's C.R.S.A. § 13-21-119.

#### [4] Animals € 67

28k67 Most Cited Cases

Appellate court must apply a strict construction to grant of immunity in equine activities statute. West's C.R.S.A. § 13-21-119.

#### [5] Animals ©~67

28k67 Most Cited Cases

Wranglers' negligence in failing to remove terrified 11-year-old girl from horse while on guided tour was not "inherent risk of equine activities" within meaning of equine activities statute, which granted immunity from liability for injuries to persons and entities involved in equine activities. West's C.R.S.A. § 13-21-119.

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[6] Animals € 367

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Immunity granted in the equine activities statute is limited to injuries resulting from the inherent risks of equine activities. West's C.R.S.A. § 13-21-119. \*349 Warren & Mundt, P.C., Robert B. Warren, Colorado Springs, Colorado, for Plaintiff-Appellee.

\*350 Retherford, Mullen, Johnson & Bruce, LLC, Anthony A. Johnson, Colorado Springs, Colorado, for Defendant-Appellant.

The Johnson Law Firm, Peter M. Johnson, Andrew R. Johnson, Denver, Colorado, for Amicus Curiae Colorado Horse Council, Inc.

Opinion by Judge RULAND. [FN\*\*]

FN\*\* Sitting by assignment of the Chief Justice under provisions of the Colo. Const. art. VI, Sec. 5(3), and § 24-51-1105, C.R.S.2001.

In this action to recover damages for personal injuries, defendant, Academy Riding Stables, appeals from the judgment entered in favor of plaintiff, Byron C. Fielder. We affirm.

The relevant facts are not in dispute. Plaintiff was one of eighteen persons who rented horses from defendant to ride horseback on a guided tour. An eleven-year-old girl was among those participating in the tour.

Before the ride began, all the participants reviewed a form that included the rules and regulations governing the guided tour. On the form, the participants also indicated their level of experience with horses. In the young girl's case, her father completed the form and indicated that she had no experience riding horseback. Defendant's employees properly matched the young girl to a horse that had been ridden on numerous occasions by inexperienced young children.

About one-third of the way through the two-hour ride, the young girl began to scream. Eventually, the screaming spooked her horse, and the horse bolted forward into plaintiff's horse. Plaintiff's horse reared, throwing plaintiff to the ground and injuring him.

Trial was to the court. Defendant argued that it was immune from liability because plaintiff's injury resulted from an inherent risk of equine activity as defined in § 13-21-119(2)(f), C.R.S.2001. In response, plaintiff asserted that defendant's negligence fit within an exception to the statutory immunity because defendant failed properly to supervise the girl when she began screaming.

Initially, the trial court found that plaintiff's injuries were a direct result of the "inherent risks of equine activities" within the meaning of § 13-21-119(2)(f). However, it also determined that defendant's negligence fit within the exception to the statute, Specifically, the court found that while defendant had properly matched the girl to a horse initially based on her father's representations, defendant owed a continuing duty under the statute to remove the child from the horse if circumstances changed and the match between horse and rider was no longer suitable.

On appeal, defendant contends that the trial court erred in its interpretation of the statute. However, we reach the same conclusion as did the trial court, but for somewhat different reasons.

[1][2] Interpretation of a statute presents a question of law. Therefore, the trial court's determination is subject to independent review by the appellate court. Fogg v. Macaluso, 892 P.2d 271 (Colo.1995) . The primary goal in determining the meaning of a statute is to ascertain and give effect to the legislative intent by construing the words of the statute according to their plain and ordinary meaning. Golden Animal Hosp. v. Horton, 897 P.2d 833 (Colo.1995).

[3][4] Here, because the state and its citizens derive economic and personal benefits from "equine activities," the General Assembly adopted § 13-21-119(1), C.R.S.2001, to grant immunity to persons and entities involved in "equine activities" from liability for injuries that result from certain

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"inherent risks of equine activities." Section 13-21-119(3), C.R.S.2001; see also Culver v. Samuels, 37 P.3d 535 (Colo.App.2001). However, the immunity statute is inconsistent with the former duties of an equine professional under the common law. Shandy v. Sombrero Ranches, Inc., 525 P.2d 487 (Colo.App.1974)(not selected for official publication)(discussing duties of a wrangler when a rider is unable to control a horse). Hence, we must apply a strict construction to that grant of \*351 immunity. See Walton v. State, 968 P.2d 636 (Colo.1998).

Included within the inherent risks of equine activities are "[t]he unpredictability of the animal's reaction to ... sounds," "[c]ollisions with other animals," and "[t]he 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." Section 13-21-119(2)(f)(II), (IV), (V), C.R.S.2001.

There are, however, statutory exceptions to the general grant of immunity. One such exception applies if the equine professional fails to make reasonable efforts to determine the ability of the participant to safely manage the particular animal based on the participant's representations of his or her ability. Section 13-21-119(4)(b)(I)(B), C.R.S.2001.

[5] In this case, the trial court found with record support that defendant fulfilled its obligation under the statute initially by matching the young girl with a horse that had been used successfully with inexperienced riders. However, the court also found:

It's uncontradicted that by immediately or shortly after the ride started, [the young girl] began screaming intermittently, if not constantly in terror. And that's important to the ruling because she was not screaming for any one of a number of other reasons which might not have alerted a reasonable and prudent person to the conclusion that she should be taken off that horse.

Notwithstanding the fact that there were two or three wranglers on the ride, none of them recognized what a reasonable and prudent person in the same or similar circumstances should have, and that is that [the young girl] was terrified of riding any horse, the entire experience of riding a horse. She was allowed to continue riding to a point where her screaming spooked [the horse] ... causing [the horse] to bolt into the rear of the Plaintiff's horse causing that horse to rear and to throw him. But for the negligence of the Defendant's agents on the ride, negligence which was within the scope of that continuing duty which is set out by the statute, the Plaintiff's injury would not have been incurred. (emphasis supplied)

Even if we assume, as defendant argues, that the trial court erred in imposing a continuing duty after the rider and horse were properly matched, we must still determine whether defendant is granted immunity under the statute for the negligent failure of the wranglers to remove the child from the horse despite an obvious danger.

After defining the inherent risk of equine activity, the statute, in § 13- 21-119(3) provides in relevant part:

Except as provided in subsection (4) of this section, ... an equine professional ... shall not be liable for an injury to ... a participant resulting from the *inherent risks of equine activities* .... (emphasis supplied)

[6] Thus, the immunity granted in the statute is limited to injuries resulting from the inherent risks of equine activities. See B & B Livery, Inc. v. Riehl, 960 P.2d 134, 138 (Colo.1998)(noting that liability under the Act is not limited if injury to the participant results from "non-inherent" or other risks). Here, the accident was not directly caused by such an inherent risk. Instead, the direct cause was the negligence of the wranglers in failing to remove the child from the horse before it bolted.

We find further support for this interpretation based upon the analysis in *Graven v. Vail Assocs.*, *Inc.*, 909 P.2d 514 (Colo.1995), and apply it here.

In Graven, the plaintiff was injured in an accident on the ski slope. The court was required to

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interpret certain 1990 amendments to the Ski Safety Act adopting exceptions from liability of ski operators for the "inherent dangers and risks of skiing." "Inherent dangers and risks of skiing" are defined in the Act as including "those dangers or conditions which are an integral part of the sport of skiing, including changing weather conditions; snow conditions as they exist or may change[; and] surface or subsurface conditions." 33-44-103(3,5), C.R.S.2001.

In addressing this section of the statute, the court stated, among other things:

\*352 [W]hen interpreting a statute, we must read and interpret the language "so as to give consistent, harmonious and sensible effect to all of its parts." The dangers and risks detailed in section 33-44-103(3.5) are intended to describe those "which are an integral part of the sport of skiing." The detailed listing of dangers and risks must be read with that intent and limitation in

Graven v. Vail Assocs., Inc., supra, 909 P.2d at 519 (second emphasis supplied; citation omitted).

Here, as discussed, there is no provision granting immunity for the negligence of defendant's wranglers in failing to protect the participants from an obvious danger of which they have ample notice.

Accordingly, applying the analysis in Graven, we read "inherent risks of equine activity" as a limitation on the types of activity for which immunity is granted. We conclude that the negligence of the wranglers here is not among such "inherent risks." We further conclude that this interpretation represents a strict construction of the grant of immunity, as is required.

As a result, we determine that the trial court reached the correct result.

The judgment is affirmed.

Judge DAVIDSON and Judge DAILEY concur.

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