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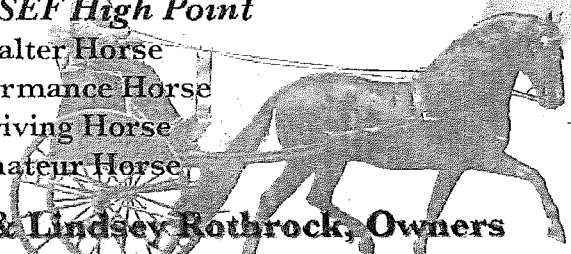
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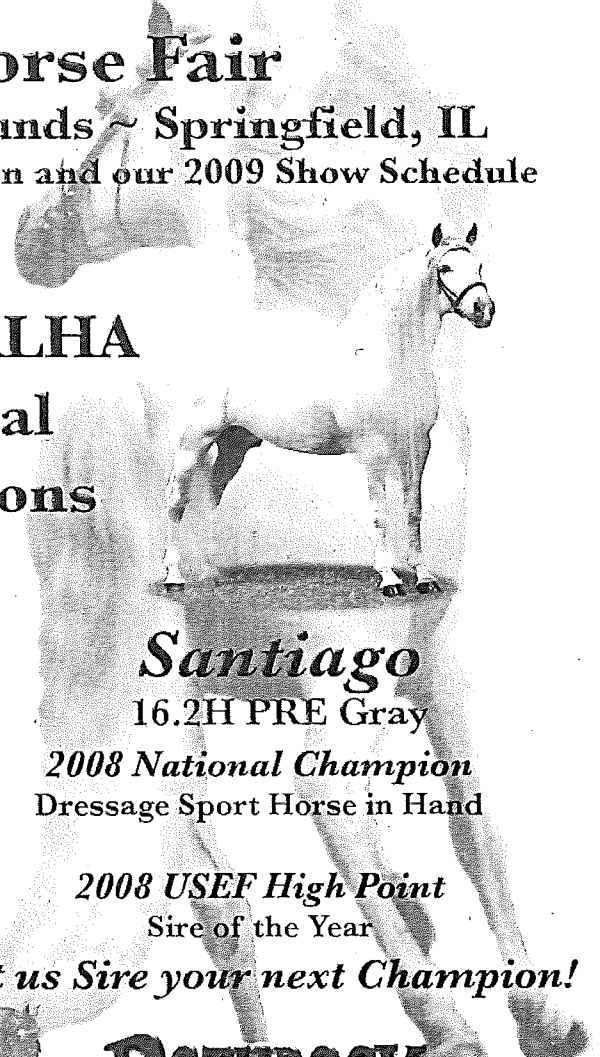
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Legal Bits

By Yvonne C. Ogrant
Attorney at Law



Liability Under the Animal Control Act: Was the Horse Provoked and Does it Matter?

Legal Bits was created to educate readers on a variety of equine law related issues and topics. Past articles have examined how equine industry laws are developed through legislative action and

Appellate Court decisions. Recently, the Illinois Appellate Court issued a decision under the Illinois Animal Control Act—a statute allowing injured parties to recover from animal caused injuries, but requires that the injured person must show that the animal was not provoked to cause the injury. If the injured person cannot prove a lack of provocation, they cannot recover for their damages from the horse owner under the Animal Control Act. In this recently decided case, the Court allowed the defendant's expert to testify defining what provokes a horse to kick. You may find this decision not only interesting, but applicable to how you interact or do business with others in relation to your own horse.

The Animal Control Act

The Animal Control Act states that if a dog or other animal, without provocation, attacks or injures someone who is peaceably conducting himself in any place where he may lawfully be, the owner of such dog or other animal is liable in damages to such person for the full amount of the injury sustained. An injured person suing for damages under the Animal Control Act must therefore allege and prove: (1) an injury caused by an animal owned by the defendant; (2) *lack of provocation*; (3) the peaceable conduct of the injured person; and (4) the presence of the injured person in a place where he has a legal right to be.

The Case – *Patricia and Linnea Johnson v. William and Ramona Johnson*

On March 15, 2003, seven-year-old Linnea Johnson was kicked in the back by a horse owned by defendant Ramona Johnson and, at the time of the injury, controlled by her Ramona's husband, defendant William Johnson. (There is no relationship between the Johnson plaintiffs and the Johnson defendants). William was leading the horse when he stopped along side the barn to talk to another boarder. While they were talking, William felt the horse shuffle and shift his weight from his right leg to his left leg and then heard Linnea cry out. When he looked back, he saw Linnea on the ground along side a grooming brush. Linnea testified she was kneeling by the brush box along side the barn when she heard the horse shuffle his feet and then she was kicked. The kick propelled her into the barn wall and cracked the riding helmet she was wearing. She denied she had walked behind the horse prior to being kicked. While the testimony of the witnesses differ slightly on the reason Linnea was behind the horse, Linnea, her father, and the horse's owners, uniformly testified that it is unsafe for a person to pass behind the back of a horse where it has no vision as they may become startled and kick.

The defendants retained an expert witness to testify to the jury at trial that you never approach a horse from behind because the horse cannot see you.

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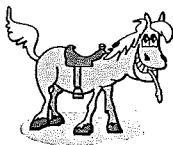
The expert provided testimony about the nature and instinctive responses of horses, including their kick response. In pertinent part, she indicated that horses are prey animals that react instinctively to predator behavior. The expert further testified that “an altogether too common way of provoking a horse to kick out” was for a person to approach the horse in its blind spot without alerting the horse to her presence. She acknowledged that a horse will not kick out every time in response to such stimuli, but acknowledged that such a response was reasonably expected. “[K]icking out in reaction to a perceived predator is a natural prey behavior, and a natural and predictable expression of the horse's surprise and fright.” She indicated that a horse's kick response was “very likely,” and that the horse's response in this case “would not surprise anyone familiar with horses and their nature and instincts.” The Court allowed the presentation of this expert's testimony to the jury to facilitate their decision on whether the defendants were liable for the child's injuries. (For reasons unrelated to the provocation issue, the case was sent to the lower court for a new trial.)

The Lesson Learned

The Court's ruling in the *Johnson v. Johnson* case provides legal authority for the proposition that a normal horse may kick in response to being silently approached from behind and that such behavior can be found to constitute provocation under the Animal Control Act. If the horse owner can establish their horse was provoked to kick, thus causing the plaintiff's injuries, the horse owner may be relieved of liability for those injuries—at least under the Animal Control Act. If this case were decided under the Equine Activity Liability Act, provocation would not be an issue for either party. Therefore, we should be reminded of the importance of properly drafted liability releases wherein we can define the inherent risks of equine activities to include a horse's unpredictable reaction to sounds, sights, people, animals, and other stimuli by biting, running, kicking and other causes of injuries to others. Statutes and case law may provide valuable defenses and liability protections, but an enforceable contract wherein the injured person has expressly assumed the risks of horses' unpredictable behavior and relieved you from liability for injuries caused by these inherent risks may provide protections where the statutes and case law do not apply or otherwise fail.

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