

THE HORRORS OF HAULING: A PARABLE

Once upon a time, Kindly Equestrian offered to give a friend and her horse a ride to a competition. The friend was delighted and offered to split the cost of the gas as well as hotel expenses in return. Early the next morning, they loaded their show gear in Kindly Equestrian's Blazer, and their two horses, tack, and feed into Kindly Equestrian's bumper-pull 2 horse Kiefer. On the way to the show, a car ran a red light and slammed into the passenger side of Kindly Equestrian's Blazer, which flipped, causing the Kiefer trailer to flip with it. Kindly Equestrian and friend were seriously injured, as were both horses who were euthanized. The show gear and tack were also destroyed. The driver of the car which ran the red light was uninsured. Once able to leave the hospital, Friend (now labeled "Former Friend"), sues Kindly Equestrian on the grounds that: (1) Former Friend paid valuable consideration for the service of hauling, and (2) Kindly Equestrian breached the standard of care owed by hauling the horses in a trailer too heavy for the Blazer pulling it. Former Friend alleged that "but for" the oversized trailer, the car and trailer would not have flipped when hit, thus making Kindly Equestrian negligent and liable to Former Friend for damages including: (1) Former Friend's medical expenses, rehab expenses, lost salary, impaired earning capacity; emotional distress and pain and suffering; (2) Former Friend's damaged show gear and tack; and (3) Former Friend's dead horse.

Wow. A terrible accident, you say. Fortunately, this one is entirely hypothetical, but it's designed to illustrate how important it is for YOU to determine what insurance coverages you have, and what insurance coverages you NEED, before you ever haul horses for a friend.

1. What issues are involved?

A. Was the endeavor business or personal?

In this instance, while Kindly Equestrian is not in the business of hauling horses, she did agree to accept Friend's offer to split the gas and hotel expenses in return for the ride. This is a form of barter, which may be considered compensation for those services, which may constitute a business endeavor profiting Kindly Equestrian. Kindly Equestrian thus might be found to have engaged in an uninsured business activity not otherwise covered under her general auto policy. Be aware most personal insurance policies exclude business coverage. Because the use of an auto, or home in business is different than the use of an auto or home for personal reasons, an insurance company requires particularity in your identification of the use so the company can appropriately assess the risk based on use. If its determined that Kindly Equestrian was using this Blazer to frequently haul friends for compensation, even though she didn't consider it a business, Kindly Equestrian may have **no coverage** where business use was not identified and thus not contemplated under the policy.

B. What does Kindly Equestrian's auto insurance cover?

Let's assume her auto insurance is applicable. Now, what is covered? That standard auto policy would most likely cover: (1) repair or replacement of the vehicle damage; (2) repair or replacement of the vehicle contents, including the show tack assuming any of it was inside the damaged vehicle instead of the horse trailer; and (3) reasonable personal injury/medical expenses

of Kindly Equestrian and Former Friend up to the limits of that particular policy. However, if the cumulative expenses exceed the value of the policy, Kindly Equestrian is still on the hook for the difference. In catastrophic injuries (i.e. – spinal cord or closed head injuries, etc.), this can easily be the case. Also, returning to the business aspect, be aware that a personal policy will NOT cover a business exposure. If there's compensation is involved, it may be considered a "business exposure". Check with your agent!

C. What about coverage for tack and horses in the horse trailer?

Kindly Equestrian did carry separate auto insurance coverage for the horse trailer. This coverage typically covers repair or replacement of the trailer itself, as well as the damaged tack in the trailer. In many instances, the value of the horses will exceed the value of the trailer and tack. If Kindly Equestrian or Former Friend carried individual Mortality and/or Major Medical policies on their horses, these policies would come into play. However, Former Friend would still have the ability to sue Kindly Equestrian for the injury to her horse, and Kindly Equestrian would not typically have coverage for these damages. For this reason, if Kindly Equestrian is going to routinely haul horses, Kindly Equestrian should also consider a Care, Custody and Control and/or a Cargo Hauling policy to cover any potential harm to the horses while in Kindly Equestrian's trailer, as well as counsel her friends that they should carry separate Mortality and Major Medical on their own horses.

D. Does Kindly Equestrian need insurance coverage when we have the Equine Liability Act?

Under these facts, the EALA statutes do not even apply. The purpose of the Equine Activity Liability Acts is to prevent frivolous lawsuits related to **personal injury to a person** which arises out of the **inherent risks of equine activities**. The injury to Kindly Equestrian and Former Friend had nothing to do with personal injury caused by a horse – it resulted from a car running a red light, and the potential negligence of Kindly Equestrian in mismatching vehicle to trailer. Likewise, the resulting damage to the trailer and contents arose from the same activity, which had nothing to do with inherent behavior of horses, thus making the Act inapplicable.

E. What about a Liability Waiver? Absolutely! This is a no brainer!

MORAL TO THIS STORY:

APPROPRIATE AND ADEQUATE WAIVERS AND INSURANCE IS KEY.

Call your lawyer and your insurance agent – right now!

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