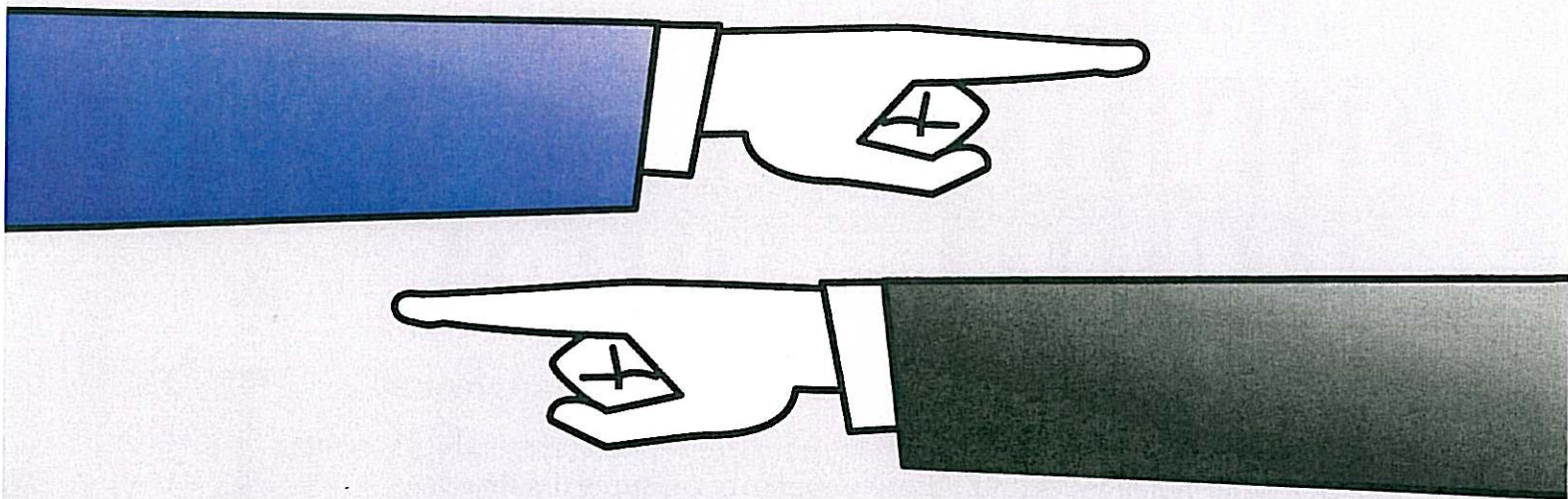


"HORSE SENSE" PRACTICAL INFORMATION FOR EVERY OWNER



# RACING'S RESPONSIBILITIES

by *\*Piers Plunket*

*(\*The views expressed in this article are those of Mr. Plunket, and not necessarily those of TOC.)*

**T**HE RECENT DECISION IN THE HIGHLY PUBLICIZED "INTERWIT" CASE, IN WHICH OWNERS OF A HORSE INVOLVED IN A FATAL MISHAP ON THE RACETRACK WERE ABLE TO RECOVER FINANCIAL RESTITUTION FROM THE OWNER(S) OF THE HORSE THAT PRECIPITATED THE ACCIDENT, SADLY ILLUSTRATES HOW LITIGIOUS THE HORSE RACING INDUSTRY HAS BECOME. MORE IMPORTANTLY, IT SHOULD SERVE NOTICE TO PARTICIPANTS THAT RACING INVOLVES SOME INHERENT RISKS, AND THE USE OF THE COURTS TO REMEDY SUCH SITUATIONS THAT ARE BEYOND ANYONE'S CONTROL ULTIMATELY UNDERMINES THE ENTIRE INDUSTRY'S HEALTH.

## "HORSE SENSE" PRACTICAL INFORMATION FOR EVERY OWNER

### Racehorse Ownership Involves Unique Exposures

Being the owner of a horse of any description carries many of the same responsibilities and encumbrances as any other pursuit save one *huge* difference which alters the entire exposure. The object of most pursuits is inanimate but, with horses we are dealing with a living, sentient being.

Most any pursuit can cause both property damage and/or bodily injury, but the incident is usually as the result of human intervention and error be it negligence, ignorance, or mechanical breakdown. Horses, on the other hand, can cause both property damage and/or bodily injury without any interference from man. With a will and mind of their own, all our safeguards may never be sufficient to eliminate this risk. Every participant or purveyor of the industry MUST recognize this fact.

It must also be remembered that, contrary to popular belief, the mere fact that an owner has transferred the care and protection of your horse(s) to another, be it a trainer or out to a farm, does not in the eyes of the law exonerate or remove you from blame and responsibility in the event that an incident were to occur. In this litigious "deep pocket" environment, racehorse owners are prime targets and may be held accountable in the rare event that something were to occur.

### Lawsuits Threatening Health of Industry

Our legal atmosphere almost promotes for the filing of frivolous suits against anyone and everyone who

could be considered to have some liability, however vague. Insult is then added to injury by awarding compensation with sometimes ridiculous penalties. In the case of a horse striking someone totally unconnected to either the owner or the horse, for example a fan at the racetrack, the

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owner, who may not even reside in the state, could hardly be held accountable.

Of course legitimate negligence that results in either injury or damage should be pursued. However, most cases that could arise from the horse industry pit the plaintiff against the defendant who usually takes the form of an insurance company. Most of the historical rulings have found in favor of the plaintiff with the sad effect that rather than lose in court with the prospect of heinous punitive damages, the insurance company settles out of court in order to reduce the cost incurred by defending the case. This

may reduce the pain, but only serves to deepen the wound with the precedent it sets. With insurance being increasingly used to remedy financial loss, a vicious cycle is created, which only serves to worsen the problem. In cases where an insurance company is not available, ideally, a decision should be sought for the principle of the issue. In reality, however, it may only be pursued if there are adequate assets available for recovery. This scenario must be checked if we are not to see a further contraction in ownership.

Unfortunately, we cannot afford to expect the legal profession to take the moral "high road", expose these cases for what they are, and summarily dispense with them for the protection of the industry. There remains a clear danger that for as long as the law operates on a contingency basis, it will not only be used to serve the ends of people who feel wronged and seek financial compensation as the remedy, but also for financial restitution or gain. If unchecked, the resulting effect will be to drive away those people who participate in the sport for their love of it.

As owners, we must accept that this industry carries NO promises or warranties of either prosperity or satisfaction. Accidents will and do happen without there being any attributable blame. Everyone involved must be prepared to accept the responsibility of their participation and accept some of the extraneous risks that are involved in the sport of horseracing. We must continue to emphasize and remind everyone of the inherent risk of this industry.

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# Responsibilities

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## Protections Available


Although the differences between the horse racing industry and other activities are unique and may, on reflection, seem onerous, the insurance protections available are similar in both content and character to any other pursuit. These differences should not alter the way one would protect oneself, but serve to reinforce the need to take at least diligent steps, if not more.

Insurance cannot eliminate the risk, but fortunately it does offer some protection against the crippling cost of defending a suit. The horse industry has been an insurable class for some 50 years and provides coverages for all participants, including liability, property, mortality, workers

compensation, and many other contingency coverages unique to the industry. Racetracks also purchase huge general liability limits to protect themselves from a suit which, as a publicly used utility, could come from any quarter.

Customarily, ordinary homeowners policies will exclude most equine activities. However, as an owner, general liability coverage specific to horse ownership is readily available and from a cost point of view, compares favorably with other pursuits with the premium being charged on the number of horses owned and their usage. Insurance companies providing such coverages may be found through industry trade publications, or through recommendations

provided by respected trainers or other owners. The TOC "Owner's Handbook" will also contain a list of broker/agents and insurance companies who provide equine-related insurance products.

Realistically, and in conclusion, we can only hope that people will act responsibly, and that the insurance protections available will serve as prudent safeguards for their general protection. 

*Piers Plunket is C.F.O. and Secretary of Clay Ward California Insurance Services, Inc., a firm specializing in insurance for the Thoroughbred industry.*

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