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Losing Plaintiff In Sales Fraud Case Must Pay Defendants More Than $700K In Attorneys' Fees

It is every plaintiff's worst nightmare: to lose a case and then get tagged with paying the other side's attorneys' fees. Some lawyers will say that it doesn't happen that often, and others will say that it doesn't happen often enough.

But so it came to pass for the disgruntled buyer of a horse who filed suit in Florida — a state that has what is called an "offer of judgment statute." The basic premise of the law is that if the trial outcome of a case is better for the defendant than the defendant's pre-trial settlement offer, the plaintiff has to pay the defendant's attorney's fees.

In the recent Florida case, the disgruntled buyer alleged the trainers selling the horse had lied to him about the horse's history of lameness and performance ability, causing him to pay $250,000 for a horse that was worth maybe $30,000 because it was lame and had a reputation as a "dirty stopper." The trainers were confident that the case had no merit — they knew the horse, they knew they'd done nothing wrong, and they had an experienced equine law practitioner on their side. Pursuant to Florida's offer of judgment statute, they presented offers of settlement totaling only $5500, which the buyer rejected. They put the case in the hands of the jury, and their confidence paid off. The jury found in their favor and awarded the disgruntled buyer nothing.

Not only were trainers vindicated by the jury's verdict, but the court rejected the buyer's motions to set aside the jury's verdict, finding there was sufficient evidence for the jury to reach its conclusion.

In finding the trainers entitled to recover their attorneys' fees, the court found the record contained ample support for their confidence in their defense. The court specifically commented on the equine law expertise of one of the defense attorneys, and credited that expertise in assessing the reasonableness of the low-ball settlement offer.

The court awarded one defendant close to $320,000 in attorneys' fees, representing 933.66 hours of attorney time (with the most experienced member of the defense team earning $395 per hour). The second defendant asked the court to award him more than $525,000, but was ultimately awarded almost $395,000, representing 828.53 hours of attorney time. The court found the second defense team reasonably charged hourly rates ranging from $486-585 per hour per attorney. The case was tried in federal court in West Palm Beach, Florida, and all the defense attorneys were local to that area.

Winner winner chicken dinner!

Zendejas v. Redman, No. 15-81229 -CIV-MARRA (USDC, S.D. Fl.)

Monensin Tainted Feed Case Filed In Chicago

A purported class action complaint has been filed in federal court in Chicago against the Archer-Daniels-Midland Company and ADM Alliance Nutrition, Inc., manufacturers of horse feed allegedly tainted with monensin.

Monensin is used in cattle feed to increase weight and is poisonous to horses. The complaint alleges the same manufacturing lines were used to produce both horse and cattle feeds, causing cross-contamination. There is neither cure nor antidote for a horse exposed to too much monensin, although how much is "too much" has not been scientifically established because a study to make that determination cannot be ethically conducted.

The "class" status of the case has not yet been certified, but the two lead plaintiffs allege that, between them, nine horses died from ingesting monensin tainted horse feed.

Berarov v. Archers-Daniels-Midland Co., No. 16-C-07355 (United States District Court for the Northern District of Illinois, Eastern Division)

Court Tosses Lawsuit Over Horse Sale Contract

Horse sales can, and do, go awry in any number of ways. But a court in Michigan recently enforced the basic equitable maxim "you can't have your cake and eat it too."

An apparently much-loved horse was sold by a farm in Florida to a buyer in Michigan. We can presume the "much-loved" part because the Florida farm retained a "right of first refusal" to buy the horse back from the Michigan buyer if she ever decided to sell. Such buy back provisions are not uncommon, but tend to be difficult to enforce for a variety of practical reasons.

One of those practical challenges arose in this case when the Michigan buyer fell behind on her board payments. Pressed for cash, she agreed to sell the horse to a woman who paid $4600 to the Michigan buyer and another $900 directly to the trainer who was owed for board. The Michigan buyer gave the woman a bill of sale with her original purchase agreement attached. The Michigan buyer assured the woman that she had contacted the Florida farm by telephone and that the right of first refusal was "taken care of."

Yes, I will take my horse back. Thank you.

However, the day after the woman purchased the horse, the story changed. The Michigan buyer informed the woman that the Florida farm had decided to exercise its right of first refusal and purchase the horse after all. The Florida farm then sued the woman to enforce the right of first refusal and get back the horse.

The Florida farm eventually settled with the woman, paying her $24,000 for the horse. Nonetheless, the woman then filed suit against the Michigan buyer alleging breach of contract and fraud.

The Michigan woman asked the court to dismiss the woman's suit, arguing that "even if there had been a breach" the woman could not show that she had suffered damages when she had received $24,000 from the Florida farm — nearly $20,000 more than what she'd paid for the horse.

The trial court agreed and dismissed the woman's lawsuit. The woman appealed, and the appellate court affirmed the dismissal. The appellate court explained that the woman had not claimed ascertainable financial injury beyond the $24,000 that she received from the Florida farm. While she claimed deprivation of "future additional profits" she could have made from the horse, the court found this claim to be speculative. That the horse's value may have increased after the Florida farm bought it back did not support the woman's claim, because there was no guarantee that she would have attained the same value-increasing success with the horse.

Winthrop v. Deck, No. 338773 (Court of Appeals of Michigan) (1/8/19)

Dogs Bite, Horses Kick . . . Some Risks Are Just Inherent To Animals

When it comes to activities involving animals, requiring participants to sign a pre-injury release of liability as a pre-requisite to participation is par for the course. Likewise, when a participant is injured, they may take to the courts to test the validity of the document — even though its intent to prevent a lawsuit is clear.

In a recent California case, an animal shelter volunteer signed a release of liability and, as fate would have it, was attacked by one of the shelter dogs. She sued, but her lawsuit was dismissed on the basis of the release she signed. She appealed the dismissal, seeking to have her lawsuit reinstated.

The appellate court affirmed the trial court's dismissal of the case. Not only did the appellate court agree with the trial court that the release was enforceable, but it found the volunteer's lawsuit to be barred by the doctrine of primary assumption of the risk. The court openly rejected the volunteer's argument that the shelter could have minimized her injuries by implementing additional safety measures that might have prevented the attack. The court held the opposite was true: the shelter "had no duty to eliminate or minimize the risks inherent in interacting with shelter dogs… [its] sole duty was not to unreasonably increase that risk." "[As] a volunteer at an animal shelter, [she] assumed the inherent risk of being bitten by a dog." Case dismissed.

Morris v. Best Friends Animal Soc'y, No. B286621 (Court of Appeal of Calif., Second App. Dist., Div. Two) (11/28/18)

Barn Collapse Not Fully Covered By Insurance

A couple in Pennsylvania is suing their insurance company over what they claim was incomplete coverage and "bad faith" handling of their claim under a property insurance policy. The claim arose from the collapse of their barn after a substantial snow storm.

According to the couple, a horse barn on their property suffered a partial roof collapse due to the weight of ice and snow after a winter storm. The insurance company paid to fix the portion of the collapsed roof, but noted that the building suffered from other structural damage that the insurance company believed had nothing to do with the snow-induced roof collapse. The insurance company did not pay to shore up the other parts of the structure that it claimed was simply old and "deteriorating." After the partial repair, the entire structure collapsed and the couple is suing for its replacement value, claiming that the other structural damage to the barn was not pre-existing but was caused by the snow-induced roof collapse.

The couple filed their lawsuit in state court, but the insurance company has removed it to federal court, where it is currently pending.

Flower v. Allstate Prop. & Cas. Ins. Co., No. 3:18-CV-1321 (United States District Court, Middle District of Pennsylvania)

What Insurance Comes With Membership?

Sport and business associations and clubs frequently tout "insurance coverage" as a benefit their members will be afforded as part of their dues payment. But what does that really mean? If you pay dues to join, what kind of insurance coverage can you really count on getting?

A day at the races gone bad

Three members of the Florida Standardbred Breeders and Owners Association (FSBOA) had to go to court to get the answer to that question, and it may be some time before they know for sure.

The case arose from an injury sustained during a 2015 Florida harness racing meet at Isle Casino and Racing at Pompano Park. A subcontractor of the Casino had been hired to perform the duties of an "identifier," responsible for matching horses and drivers participating in each race. The identifier was also responsible for the paddock area and the gate. The identifier was injured during a sulky race when on of the horses got spooked, a wheel came off the cart, and the horse ran into a gate post causing it to strike the identifier. The identifier was injured. Because the Casino allegedly didn't offer her workers' compensation benefits, she filed a personal injury action in state court against the Casino, the owners of the horse and the sulky driver.

The owners of the horse and the sulky driver, all members of the FSBOA, sought coverage under the association's commercial general liability policy. They all three claimed that as paying dues members of the FSBOA, liability coverage had been promised them as a benefit included with membership. The insurance company denied coverage, taking the position that while it had issued a policy to FSBOA, the association's members were not "insureds" for whom there was coverage for the identifier's claim under the policy that was in place.

The horse owners and sulky driver filed a declaratory judgment lawsuit in Florida state court against the insurance company that had issued the policy to FBSOA, seeking insurance coverage from the company for both indemnity and defense of the personal injury lawsuit filed against them by the identifier. The insurance company removed the declaratory judgment action to federal court, where it is currently pending.

Klohr v. Mid-Continent Excess & Surplus Ins. Co., No. 18-80761-CIV (United States District Court for the Southern District of Florida)

You DO Have The Right To Remain Silent

You have the right to remain silent. Anything you say can, and will, be used against you in a court of law. But if your kid rats you out, can your silence be used as a basis to charge you with lying to the cops?

A law enforcement officer went to a house looking for a dog that had attacked two miniature horses. The officer questioned a man at the house, but the man did not reveal to the officer that the dog was on the premises. Not getting anywhere with the adults in the house, the officer accepted assistance from a child at the house, who pointed the officer to the garage where the dog was being hidden. The state then charged the man with "false informing." The man was convicted, but successfully appealed.

The appellate court reversed the man's conviction, finding that the state had failed to prove the man had given false information in the official investigation of the commission of a crime. The court noted that the state's evidence was that the man had remained silent, giving the investigating officer no information in response to the officer's questioning. The court held that "no information" is not the same as "false information," and thus his conviction for false informing could not stand.

Silence is golden… particularly if the charge is giving false information to the police

So, even if your kid makes you look like a liar, that doesn't mean your kid being a snitch will necessarily land you in jail for being a liar.

Cannon v. State, No. 18A-CR-1871 (Court of Appeals of Indiana) (12/20/18)

Court Refuses To Enforce Non-Compete

A New York court recently denied a temporary restraining order to a veterinary clinic that sought to prevent one of its former employees from practicing veterinary medicine within 40 miles of its location.

When the veterinarian first joined the practice that operated the clinic, he signed an employment contract which restricted him from practicing veterinary medicine within a 40-mile radius of the clinic's location for a period of five years from his last day of employment with the practice.

After less than two years of employment, the practice fired the veterinarian. The veterinarian then opened his own practice less than 40 miles away. The veterinarian's former employer sued, and asked the court to shut him down for violating the non-compete — both for the agreed upon 5 year period, and immediately (pending trial).

The court declined to shut down the veterinarian's competing practice pending trial on the breach of contract action. The court explained that not only was there a question about the enforceability of the non-compete, but there was no proof that the veterinarian had improperly solicited clients or improperly acquired client information from his former employer. The court also commented that since the veterinarian had not quit, but had been fired, it just didn't seem fair to shut him down when allowing him to continue his new venture would cause relatively little damage to the practice of his former employer.

Davis v. Zeh, No. 2018-1073 (Supreme Court of New York, Delaware County) (11/29/18)

Rancher Did Not Castrate Stallions "In Self Defense"

In keeping with the spirit of the old west, a Utah rancher frustrated with his neighbor's problematic stallion took matters into his own hands: he castrated him (the stallion, not the neighbor). Little did he expect to be charged criminally for "wanton destruction of livestock."

The Utah-based rancher raised cattle and horses on unfenced land in an area where other area ranchers turned their animals loose to graze freely. Thus, the rancher's horses mingled freely with not only those of his neighbors, but with numerous wild, abandoned and runaway horses. The rancher had drilled a well on his property and created a "water point" for animals to use, and all the many animals (including his own) roaming freely in the area used this "water point."

Will your neighborly dispute end here?

The rancher had several mares of his own free-grazing in the area when a neighbor acquired a stallion that was likewise let loose to roam the area. This displeased the rancher, who did not want the stallion impregnating his mares. Despite the rancher's requests, the neighbor refused to contain the stallion. But, neither did the rancher fence his land.

Not only did the stallion impregnate the rancher's mares (as the rancher feared he would), but he also became aggressive towards people and would charge the rancher. The stallion became something of a neighborhood terror, dominating the herd of free grazing horses. When the rancher acquired his own stallion — in the hopes of challenging the neighborhood rogue — the newcomer was ultimately vanquished and vanished.

Then one day, the rancher drove some of his cattle to the water point. The neighbor's rogue stallion charged with his ears pinned. The rancher ran away, attuned to the likelihood that the stallion would initiate a "stud fight" with the rancher's mount. While the rancher was able to get his own horse onto a trailer and successfully avoid an altercation between the horses, the rogue stallion circled the trailer. At that point, the rancher had "had it." He corralled the stallion and several other young free-roaming studs and decided to castrate them. The neighbor subsequently complained to the sheriff's office and the rancher was charged with wanton destruction of livestock, a second-degree felony based on the value the neighbor put on his now-castrated studs.

One of the defenses upon which the rancher relied at trial was "self-defense." The court, however, refused to give the jury a self-defense instruction, holding that "by the time [the rancher] had castrated the horses, they had been corralled and any imminent threat had passed."

Another defense the rancher raised was the valuation of an expert who opined that the horses were actually worth more as geldings than as studs — but still basically worthless. The rancher got more traction with this defense, because although the jury found him guilty of the charge, they found the horses' cumulative value was only between $500 and $1500, resulting not in a felony, but rather in a class A misdemeanor conviction. His appeal was unsuccessful.

State v. Hunt, No. 20160963-CA (Court of Appeals of Utah) (11/29/18)

Privately Owned Horse Mistakenly "Rounded Up"

Members of the Pyramid Lake Paiute Indian Tribe and employees of a livestock round-up company rounded up feral horses that were on privately owned land in Nevada's Palomino Valley using motorcycles, ATVs, a helicopter, and men on horseback on January 4 and 5 of this year (2019). The Tribe was authorized to conduct the round-up, and it was apparently no secret that the horses were headed to slaughter.

Unfortunately, it was not only feral horses that were rounded up. Several privately owned horses were also caught in the roundup. One horse in particular, "Lady," became the object of a federal lawsuit initiated by her owner who was desperate to get her back before she met an untimely and gruesome demise.

Westlake v. Miller, No. 3:19-cv-00023 (United States District Court for the District of Nevada)

While the roundup was still ongoing, Lady's owner called the sheriff's office for help. The sheriff's office told Lady's owner to call the Nevada Department of Agriculture. The Nevada Department of Agriculture told Lady's owner to call the sheriff's office. No official intervened in response to her calls for help.

A Nevada Department of Agriculture employee cleared the horses for shipment on the morning of January 6th by issuing brand inspection clearance certificates for the horses, even though he did not have proof that the horses belonged to the Tribe.

The woman filed suit and a Nevada federal court issued a temporary restraining order prohibiting the slaughter of Lady. Shortly after the issuance of the temporary restraining order, Lady's owner filed a stipulation dismissing the lawsuit in its entirety. No information in the court file suggests whether Lady's outcome was happy or sad.

Trespassing Horses: "Feral" vs. "Wild"

As the above cases demonstrate, there are free roaming horses in parts of this country. Horses that have been determined to be "wild" enjoy federal protections that animal rights organizations are notorious for guarding through the filing of federal lawsuits. But there is no doubt that some of the free roaming animals are not "wild," as that term has been statutorily defined, but rather are semi-feral or "feral" in that they are either privately owned or have been abandoned (having at one time been privately owned). Property owners who have to deal with large groups of trespassing livestock probably don't care too much about whether the horses are "feral" or "wild," except when it comes to getting rid of them.

The hurdle posed to fed-up property owners by animal rights organizations is illustrated by a case that has been pending in Louisiana federal court for more than two years. The United States Army was sued when it came up with a plan to remove trespassing livestock from Fort Polk and the Joint Readiness Training Center. The Army had determined that fencing out the horses would cost it tens of millions of dollars, and instead arranged for a non-profit rescue to take custody of the feral horses. An animal rights organization sued to stop the Army from touching the horses, claiming both that the horses were "wild," and entitled to federal protection, and that the Army intended to slaughter the horses. The Army recently asked the court to dismiss the organization's lawsuit, but according to court records that motion remains pending and the horses remain a nuisance to the Army.

U.S. Center for SafeSport Marks One-Year Anniversary of Groundbreaking Legislation

Press Release
DENVER — The U.S. Center for SafeSport, an independent nonprofit dedicated to ending all forms of abuse in sport, today commemorated the one-year anniversary of the Protecting Young Victims from Sexual Abuse and Safe Sport Authorization Act of 2017, signed into law on February 14, 2018.

"We're grateful for the bipartisan leadership of Senators Feinstein, Grassley, Thune, Kuster and Brooks," said Regis Becker, Interim CEO of the U.S. Center for SafeSport. "Their efforts help the Center ensure that athletes, regardless of age or competitive level, can participate in sports that are free from bullying, hazing, sexual misconduct, or any form of emotional or physical abuse."

The law authorizes the Center to independently respond to and resolve allegations of abuse within U.S. Olympic and Paralympic sports and reinforces its mission to provide the nation's athletes and sports communities with abuse-prevention education, policies and procedures. In the year following the bill's passage, the Center developed and provided free, comprehensive materials including a Parent Toolkit, Parent Training and Minor Athlete Abuse Prevention Policies, and was honored by the Congressional Victims' Rights Caucus for its work to protect athlete well-being.

Among other things, the legislation set into motion the Center's creation of a national centralized database, which integrates the sexual misconduct findings that pre-date the Center, having been previously resolved by the U.S. Olympic and Paralympic Movement's national governing bodies (NGBs), with the Center's existing publicly searchable database. This advances the mission of the Center and creates a one-stop resource that every parent, athlete and sport organization can use for screening and background checks. The NGBs complete and certify all historical records before submitting to the Center for the centralized database.

Between opening in March 2017 and December 2018, the Center received over 2,127 reports, issued 340 disciplinary actions and designated more than 260 individuals permanently ineligible to participate within the Movements and its affiliated clubs and organizations.

In addition to response and resolution services, the Center consults sport organizations on abuse-prevention techniques and policies including best practices and tools. More than 540,00 individuals have taken its trainings. For more information on the Center's services visit www.safesport.org.

About the U.S. Center for SafeSport
The Center is the first and only national organization of its kind, focused on ending all forms of abuse in sport while carrying out its mission of making athlete well-being the centerpiece of our nation's sports culture through abuse prevention, education and accountability. As an independent non-profit headquartered in Denver, CO, the Center provides services to sport entities on abuse prevention techniques, policies and programs and provides a safe, professional and confidential place for individuals to report sexual abuse within the U.S. Olympic and Paralympic Movements. To learn more please visit www.safesport.org.

Failure To Pay Rent Terminates Oral Lease Of Pasture

It never fails that, for some, a hand-shake deal is the only way to do business. And when the deal at stake is the lease of a small parcel of pasture-land whose only use is growing grass for livestock consumption, the need for a written document might rightfully seem like overkill.

Of course, when something goes wrong, not only is it too late to get an agreement in writing, but suddenly a document doesn't seem so trivial after all.

And so it was between two Kansas farmers who verbally agreed in 2010 the tenant could rent 35 acres for $1000 per year. The tenant intended to harvest hay from the rented parcel, and she fertilized and seeded the land in furtherance of that purpose.

Miller v. Burnett., No. 118.924
(Court of Appeals of Kansas)
(11/21/18)

But when the tenant didn't make her 2015-2016 rental payment, the landlord allowed another neighbor to graze his horses on the parcel for the last three months of the term. The tenant sued, seeking reimbursement for some of her fertilizing and seeding expenses as well as half the rent paid in 2014 and 2015. Because the tenant's claim was for less than $3000, she filed in small claims court. The landlord counterclaimed for the unpaid 2015-2016 rent. The case wound its way through the court system and multiple appeals over a period of more than three years, despite the fact that no lawyers were involved (both parties represented themselves).

In the final analysis, the court ordered the tenant to pay the 2015-2016 rental payment, plus interest, and denied her reimbursement claims. The court found that because the tenant successfully harvested hay from the land during the 2015 haying season, she had successfully reaped the full benefit of the lease value.

Foreclosure Rules Differ For Agricultural Property

Two state courts in Illinois have affirmed the correct procedure in a foreclosure action against an equestrian facility involves the appointment of a receiver — a different outcome than for a residential property.

The zoning classification and the mortgagor's maintenance of a residence on the property were not determinative to the question of who would possess and maintain the property during the pendency of the foreclosure action.

The property, a 400 acre horse farm, was zoned "residential" and the property owners argued that this governmental classification was controlling and thus the court should not have appointed a receiver. The court pointed out that local zoning classifications do not control a property's categorization under the Foreclosure Law. Rather, the court explained, the actual use of the property was the focus of the inquiry into whether it was primarily "residential" or "agricultural" in character.

"The [mortgagors] kept a number of horses on the property—at one point 54—and grew hay in some of the fields, and also employed at least 11 people to maintain the property and horses. [There are] extensive grounds and facilities. . . Including guest and staff houses, a race track, at least nine barns and six pastures, and at least 19 paddocks . . . . All of this taken together demonstrates that the Property . . . was clearly agricultural in nature."

Forest Pres. Dist. Of Cook Cty. v. Royalty Props., LLC, No. 1-18-1323 (Appellate Court of Illinois, First District, Fourth Division) (12/20/18)

Doping Expert's Opinion Rejected By Two State Racing Commissions

The Pennsylvania State Horse Racing Commission and the New Jersey Racing Commission both rejected the opinions of Dr. Thomas Tobin, a veterinary, toxicology and pharmacology expert who testified as a defense expert in separate cases representing different trainers whose horses tested positive for medications in post-race testing.

When a trainer is charged with a medication or doping violation, it is typical for the trainer to retain a veterinary, toxicology and pharmacology expert to explain the positive test findings, either as a complete defense to the charges or to mitigate sanctions. The racing authority will have its own expert testify, and it is common for the experts to disagree. What is uncommon is for the defense expert's opinion to be rejected entirely, as opposed to the fact finder merely finding one expert to be more persuasive than the other.

In the Pennsylvania case, the horse tested positive for Carisoprodol, a skeletal muscle relaxant. The split sample confirmed the presence of the drug. The trainer appealed the Racing Commission's disqualification of the horse, and a hearing was held at which Dr. Tobin testified and opined that the source of the drug found in the horse was "miniscule" and attributable to a "random, inadvertent transfer of a trace amount from a human-related source." The Commission's expert disagreed, explaining that the sample indicated the horse had ingested more than a trace amount of the drug. The court reviewing the case on appeal affirmed the Commission's authority to reject Dr. Tobin's opinion in favor of the Commission's own expert.

In the New Jersey case, the horse tested positive for an excessive quantity of Lasix, which Dr. Tobin opined was the result of an improper and "extravascular" injection. Dr. Tobin testified that if the Lasix was improperly injected outside the vein, it would contaminate the post-race sample and account for the excessive levels of Lasix detected in the post-race sample. This theory of contamination, however, rested upon the assumption that the post-race sample was drawn from the same side of the neck on which the Lasix had been injected, and that the Lasix had been administered improperly in the first place. The administrative law judge hearing the case found Dr. Tobin's testimony "problematic" and not credible because it was "not based on anything other than speculation": "Tobin's testimony was speculative because he had not examined the horse and there were no facts to corroborate his theory the pre-race Lasix injection was performed improperly or that the post-race blood sample extraction was from the allegedly compromised Lasix injection point. Furthermore, there was no credible scientific basis to support Tobin's theory. His reliance on a seminar pamphlet, which he inadequately attempted to tie to a credible authority on equine furosemide administration, fell short of credible testimony." Again, the court reviewing the case on appeal affirmed the Commission's authority to reject Dr. Tobin's opinion in favor of its own experts who discredited his theory. *Ciresa v. Pa. State Horse Racing Comm'n, No. 1155 CD 2017 (Comm. Court of PA) (1/17/19); Ford v. New Jersey Racing Comm'n, No. A-0045-17T1 (Superior Court of NJ, App. Div.) (1/24/19)*

Barn And Paddock Impermissibly Built In Stream Buffer Zone

In criminal law, there are procedural rules that determine when law enforcement needs a search warrant to gather evidence from a person's private property. What law enforcement can see from the road is fair game, with no warrant required.

And so it was bad luck for one property owner that an environmental enforcement was driving by and could see from the road that she had built her barn and paddock in a stream buffer zone. The officer then returned to his office and located a more than ten year old habitat assessment for an adjacent, upstream property. Using aerial photographs and other photographs available in his office, the officer confirmed the property owner's violation of the county code.

The officer then sent the property owner a compliance letter. With no defense, the property owner agreed to move the barn and paddock out of the stream buffer zone within three months. The property owner was sent paperwork to document her agreement, but she never signed it.

The environmental enforcement officer was driving by . . .

About seven months later, the property owner was sent another notice demanding that she sign the agreement if she wanted to avoid an enforcement action. It was then that the property owner decided to appeal.

The property owner unsuccessfully argued that her right to privacy had been violated by the enforcement officer's investigation. That the enforcement officer had not set foot on her property was determinative. Because the county prevailed on appeal, the court ordered the property owner to pay the county's fees and costs.

Dotson v. Pierce County Dep't of Planning and Land Servs., No. 50860-5-H (Court of Appeals of Washington, Division Two) (12/11/18)

The Seemingly Never-ending Battle In Barrington Hills

In 2006, the Village of Barrington Hills, Illinois, amended its zoning code to permit residential horse boarding as a "home occupation," which essentially meant residents could board horses, subject to strict limitations and only during specified hours. But in 2008, a large-scale commercial horse boarding operation was cited for violating the ordinance because its "large" scale exceeded any "home occupation" as defined by the ordinance.

After the operator unsuccessfully fought the citation administratively and in court, he managed to convince the Village's Board of Trustees to adopt an ordinance that would permit large-scale horse boarding operations on residential property throughout the Village as a matter of right. Although the Board adopted the ordinance in 2015, it made it retroactive to 2006 — effectively giving the operator what the court characterized as a "legislative pardon."

As the court observed, "not everyone was pleased." Litigation ensued. A new Board repealed the ordinance less than a year later. But still the legal challenges continue. An Illinois appellate court recently sent one of the cases back to the trial court to evaluate a claim made by some of the neighbors that the 2015 ordinance violated substantive due process because it was passed solely for the benefit of one person — the operator of the large scale facility, who couldn't take "no" for an answer.

Drury v. Vill. Of Barrington Hills, No. 1-17-3042 (Appellate Court of Illinois, First District, Third Division) (12/12/18)

USEF Expels Two Members

Rulings From US Equestrian

The Hearing Committee of the United States Equestrian Federation is the disciplinary body of that organization, and doles out punishment for rule infractions and misconduct. Fines and suspensions are common, but outright expulsion from membership is not.

Accordingly, two recent rulings bear mention. In one case, a Virginia woman was expelled from membership under the Federation's reciprocity rules after pleading guilty to multiple criminal counts of animal cruelty. The woman, Anne Shumate Williams, also known as Anne Goland, of Somerset, Virginia, pled guilty to animal cruelty after local officials raided a farm where she operated a "horse rescue." In addition to discovering many ill, injured, starving and dead animals (many of which were horses), local news reports showed the animals kept in deplorable and inhumane conditions. Goland was sentenced to jail time, with the court prohibiting her from owning or possessing any horse or pet for five years. The Hearing Committee noted in its ruling that Goland's "inattention and mistreatment of multiple horses and other small animals was horrific and cut deeply against the core values of the Federation." Goland did not participate in the hearing and did not submit anything to rebut the USEF charge, and the Hearing Committee ruled unanimously that expulsion from membership was necessary in light of her criminal behavior.

The second case involved a California woman who violated Federation rules by registering herself under three different memberships using variations of her name, address, and date of birth in an attempt to circumvent an active suspension that had been previously imposed on her in 2006. Margarite Errico-Edwards, also known as Margie Edwards and Marguerite Errico, was automatically suspended back in 2004 for violating Federation rules. Despite the suspension, she continued to compete and was again sanctioned in 2006. More recently, she allegedly registered memberships under aliases "in an effort to circumvent her automatic suspensions and continue to compete. . . . The Hearing Committee was deeply concerned with Ms. Edsard's repeated efforts to avoid her suspension by way of creating aliases. Increasingly severe suspensions [h]ave not caused a change in her behavior. Accordingly, the Hearing Committee determined unanimously [t]hat expulsion from membership is necessary."

Both rulings were handed down on December 4, 2018.

USEF Initiates Proceedings to Terminate AERC Affiliate Status

by US Equestrian Communications Department | Jan 16, 2019, 12:18 PM EST

Lexington, Ky. – The United States Equestrian Federation (USEF) has announced that it has initiated proceedings to terminate the recognized affiliate status of the American Endurance Ride Conference (AERC) as soon as possible following the AERC Board of Director's approval of a disaffiliation motion on January 14, 2019, indicating that they wish to terminate their affiliation with USEF as of December 1, 2019.

While USEF shares AERC's concerns regarding horse welfare, the Federation considers this de-

Press Release From US Equestrian

layed disaffiliation to be contrary to the best interest of the future of endurance sport on a national and international level. During AERC's proposed period between now and December 1, 2019, USEF cannot be certain that AERC will comply with USEF's affiliate requirements, including compliance with bylaws, rules, decisions of the Hearing Committee, and not impeding athletes' ability to participate in international competitions, as protected under the Ted Stevens Act.

USEF will continue its commitment to national and international endurance sport and will appoint a special task force to oversee the development of the necessary mechanisms to fulfill the needs of endurance. Additionally, USEF is encouraged by the creation of the FEI Temporary Endurance Committee and looks forward to their report and recommendations for the future of endurance. USEF acknowledges that there may be some challenges as a transitional plan is put in place and will work to ensure minimal impact.

Didn't you know better?

Two recent rulings from the USEF Hearing Committee underscore how curious some doping violations can be.

In one case, a veterinarian from New York administered acepromazine to her own horse to calm it down when it trapped its right foreleg over the trailer's stall divider while being transported to a show. After the horse tested positive for the prohibited substance in post-competition testing, the veterinarian explained that she had "not considered" the "implications" of using acepromazine "since the horse would not be showing until the next day. USEF publishes medication administration guidelines that identify acepromazine as being detectable for seven days post administration. Nonetheless, the Hearing Committee only imposed its typical (for acepromazine) penalty of a 2 month suspension and $2000 fine on the veterinarian.

In the other case, a Massachusetts horse trainer had a horse test positive for three prohibited substances (caffeine, theophylline, and paraxanthine). Despite this being the trainer's second caffeine doping offense, the Hearing Committee imposed on him only a censure and $1500 fine, finding that the trainer was not trying to "gain a competitive advantage," because administering "Crystal Light" to the horse's in his care was just "part of his care and custody" protocol. Crystal Light to horses? Who knew? Do they have a flavor preference?

USDA Shuts Down Miami Animal Import Center

Press Release
WASHINGTON, D.C., January 16, 2019—Out of an abundance of caution, USDA's Animal and Plant Health Inspection Service is temporarily closing the Miami Animal Import Center to new arrivals after a handful of horses quarantined at the facility became sick. APHIS is investigating to determine the specific cause of illness in these horses, however, officials suspect salmonella, and the facility is taking precautions to stop further disease spread.
The temporary closure is effective on Saturday, January 19, 2019. APHIS is conducting environmental testing at the facility, and the samples will be sent to the National Veterinary Services Laboratories for diagnostic testing. Before reopening, the facility will undergo a complete cleaning and disinfection with disinfection targeted to any causative disease agent identified or suspected. Horses currently under quarantine at the facility are being closely monitored for any signs of illness.

To date, six horses have fallen ill with symptoms, such as diarrhea, fever and lameness. Despite receiving immediate medical treatment, three of the horses died. The other three horses are recovering. APHIS will share more information once it is available.
The Miami Animal Import Center has a long history of safely quarantining imported horses upon arrival in the United States. The health of the horses at the facility as well as any horses scheduled to arrive at the facility is our No. 1 priority.
In response to the sick horses, APHIS officials at the import center have increased biosecurity and disinfection efforts. They are also reviewing standard operating procedures with employees and verifying that all procedures are being followed. Employees at the import center are exempted from the furlough, and the government shutdown has not affected operations or staffing at the facility.
Employees at the import center are reaching out to horse brokers who have upcoming reservations at the facility to notify them of the temporary closure and apologizing for the inconvenience. Those with reservations between now and January 19th can choose to maintain their quarantine reservations or make alternate arrangements. Horses that are already at the facility will remain at the import center to complete the quarantine process, and will be released to their brokers as scheduled unless the brokers seek alternate arrangements.

The import center has approximately 95 individual horse stalls available for quarantine purposes. In addition to horse facilities, the import center also has a separate quarantine area for birds. APHIS veterinarians are monitoring all birds under quarantine and have not seen any signs of illness. The avian facility will remain open and intake of new birds will continue as scheduled.

Salmonella is a type of bacteria that can cause intestinal disease in horses, cattle, sheep, goats, llamas, dogs, cats, birds, humans, and many other species. It is not uncommon for it to occur in facilities where many horses congregate, such as veterinary hospitals. Signs of salmonella in horses vary, but can most often include diarrhea, colic and shock. While some animals may have very mild symptoms, others may have severe illness that can lead to death.

PRESS RELEASE: RMTC APPROVES OVER $250,000 IN TACTICAL RESEARCH PROJECTS

At its February 11 meeting at Gulfstream Park in Hallandale, Fla, the Racing Medication and Testing Consortium (RMTC) board approved the funding of two tactical research projects with a combined price tag in excess of $250,000, as a continuation of its ongoing focus on detecting and eliminating illicit substances in racing.

First, the RMTC is seeking to develop an inexpensive screening method for the detection of potential blood doping. The proposed project, if successful, will provide racing laboratories with a relatively inexpensive method of detecting nefarious administrations of EPO and related blood doping agents by detecting changes in the horse's blood. The goal is to detect many more EPO substances at much lower concentrations than previously achieved. The project goes hand-in-hand with another tactical research project, funded by RMTC in 2017, that has already improved detection of many common EPO products exponentially. Both EPO-related projects are being completed at the University of California-Davis Kenneth L. Maddy Laboratory.

"We are very excited about the potential of these advanced testing techniques to detect EPO administration," said Dr. Rick Arthur, Equine Medical Director for the California Horse Racing Board. "With the 2017 RMTC grant, the Maddy lab has already greatly improved the industry's EPO confirmation capabilities. Our expectations are that this second grant will enable the industry to close the circle and allow us to more effectively detect EPO micro-dosing."

The second tactical research project will be completed at the University of Florida Racing Laboratory and will be focused on the detection of the nerve-blocking agent known as liposomal bupivacaine. When misused, this drug has the potential to last for several days and evade detection in the laboratory. The goal of the project will be to determine how long these products last in the horse and to develop methods to detect and identify them in post-race testing.

"The RMTC is excited to be spearheading efforts to fight the abuse of this nerve-blocking agent on the racetrack," said RMTC Chair Alex Waldrop. "Each of the projects approved by the RMTC board this week represents significant advances that will benefit horse health as well as the integrity of racing. We anticipate no problem finding racing stakeholders who will help us fund them." Additionally, the RMTC board heard an update regarding the detection of LGD-4300 – one of the substances known as SARMS. LGD-4300 creates anabolic-like effects in the horse.

"Preliminary results indicate that this research, funded by the RMTC as part of last year's tactical research efforts, could lead to a broader method to control all anabolic-like substances in the horse," said Dr. Dionne Benson, executive director of the RMTC. "The RMTC's support of this and so many other tactical research projects is exciting, because each of them is crucial to the long-term health and vitality of horse racing.

The RMTC board also created a subcommittee to study and develop potential research projects to address bisphosphonates, as very little is known about the effects of these drugs on young, exercised, racing horses. Among the first items to come from this committee will be an educational pamphlet available in the next few months.
RMTC board members also approved educational materials on the risks of compounded medication, nutraceuticals and cannabidiol (CBD). A bulletin on CBD is available on the Tactical Research page of the RMTC website, where the other pamphlets will be posted soon.

The RMTC consists of 23 racing industry stakeholders and organizations that represent Thoroughbred, Standardbred, American Quarter Horse and Arabian racing. The organization works to develop and promote uniform rules, policies and testing standards at the national level; coordinate research and educational programs that seek to ensure the integrity of racing and the health and welfare of racehorses and participants; and protect the interests of the racing public.

For additional information, visit the RMTC website at *rmtcnet.com* or contact Hallie Lewis, RMTC communications and development consultant, at (859) 759-4081.

FEI ISSUES GUIDELINES ON EQUINE INFLUENZA

8 Feb 2019 Press Release
The FEI has issued guidelines to the equestrian community to protect horses from and prevent transmission of equine influenza, following confirmed outbreaks of the virus in Belgium, France, Germany, Great Britain, Ireland, Nigeria, and the United States of America since the beginning of the year.

Equine influenza is a highly contagious virus which causes respiratory disease in horses. The virus is endemic to most countries in the world and outbreaks can have a severe impact on the equine industry, potentially resulting in restrictions on horse movement and cancelled events.

"Vaccinating horses against equine influenza is key to combating the spread of equine influenza," FEI Veterinary Director Göran Åkerström said. "It is important that all horses are vaccinated, regardless of whether or not they compete or come into contact with other horses, but there are also biosecurity measures that should be put in place, including best hygiene practices."

All FEI horses must have an up-to-date vaccination history in their passports and checks are carried out on entry to all FEI events.

The air-borne virus can spread up to two kilometres, depending on the environmental conditions, and can be easily transmitted between horses that are in close contact, such as attending events, group training and hunting, or between vaccinated and unvaccinated horses in the home yard.

Any horse that displays any signs of illness should not leave their home yard. This also applies to any horse that has been in contact with a horse or horses that have equine influenza.

"This year we are seeing a return of the Clade 1 virus in infected horses. Vaccinated horses have suffered only mild clinical signs of the disease and recovered quickly, but unvaccinated horses have been much more severely affected", FEI Veterinary Advisor Caterina Termine said. "The key message is, get your horse vaccinated, monitor horse health extremely closely and call your veterinarian if you have any concerns."

PROHIBITED SUBSTANCE CASES UNDER FEI ANTI-DOPING RULES

In January and February, 2019, the FEI announced five adverse analytical findings (AAF) involving various equine prohibited substances.

The January cases involve two *Banned Substances under the FEI's Equine Anti-Doping and Controlled Medication Regulations (EADCMRs). The first case involves Ergonovine, which is also designated as a Specified Substance. As Specified Substances may enter a horse's system inadvertently, due to a credible non-doping explanation, the FEI and/or the FEI Tribunal have more flexibility when prosecuting a case or when making a sanctioning decision.

Horse: Su Rai (FEI ID 105IR91/ITA)
Person Responsible: Antonello Mulas (FEI ID 10115574/ITA)
Event: CEI2* 120 - Follonica (ITA), 16-18.11.2018
Prohibited Substance: Ergonovine

In this case, the athlete was not provisionally suspended at this stage of the procedure. The horse has been provisionally suspended for two months from the date of notification until 6 March 2019.

In the second January case the athlete has been provisionally suspended from the date of notification until the FEI Tribunal renders its decisions. The horse has been provisionally suspended for two months from the date of notification until 14 March 2019:

Horse: Soda (FEI ID 104PY45/UAE)
Person Responsible: Ayed Sauod Alosaimi (FEI ID 10048137/KSA)
Event: CEI1* 80 - Al Qaseem (KSA), 01.12.2018
Prohibited Substance: Boldione, Boldenone

Two of the February cases involve Endurance riders whose horses tested positive for arsenic. The two athletes in these cases have been provisionally suspended from the date of notification until the FEI Tribunal renders its decisions. The horses have been provisionally suspended for two months from the date of notification until 6 April 2019. A third horse tested positive for Stanozolol.

Horse: Kekmadar (FEI ID 104YV16/UAE)
Person Responsible: Said Al Balushi (FEI ID 10079195/OMA)
Trainer: Rashed Suhail Al Darbi (FEI ID 10017928/UAE)
Event: CEI1* 100 – Abu Dhabi, Al Wathba (UAE), 08.12.2018
Prohibited Substance: Arsenic

Horse: Si Quilombo (FEI ID 106HC75/UAE)
Person Responsible: Said Al Balushi (FEI ID 10079195/OMA)
Trainer: Ibrahim Joynal Abedin (FEI ID 10161288/UAE)
Event: CEI1* 100 – Abu Dhabi, Al Wathba (UAE), 15.12.2018
Prohibited Substance: Arsenic

FEI TRIBUNAL ISSUES FINAL DECISIONS IN FIVE DOPING CASES

In November and December, 2018, the FEI Tribunal issued Final Decisions in five cases involving prohibited, or banned, substances. The decisions were announced in press releases, with the full text of the decisions available online at www.fei.org

Three of the cases involve the substance Boldenone, which was detected in samples taken from the horses at the CCI1* in Delhi (IND) on 27-30 November 2017.

The cases are: Golden Boy (FEI ID 104IU95/IND), ridden by Indian athlete Raj Kumar (FEI ID 10107326/IND); Cantolina (FEI ID 105PG73/IND), ridden by Indian athlete Apurva Dabhade (FEI ID 10113752/IND); and Black Beauty (FEI ID 105WE15/IND), ridden by Indian athlete Sarvesh Singh Pal (FEI ID 10161986/IND). The horse Black Beauty also tested positive to the Controlled Medication substance Meloxicam.

All three athletes have been suspended for two years from the date of notification of the adverse analytical findings (9 January 2018) until 8 January 2020. The three horses were provisionally suspended for two months from the date of notification. None of the athletes will be charged legal costs, but fines were levied on each of them.

The athletes have 21 days to appeal the decisions to the Court of Arbitration for Sport (CAS) from the dates of notification of the Final Decisions (9 November 2018).

American athletes Adrienne Lyle (FEI ID 10015662/USA), with the horse Horizon (FEI ID 105FJ02/USA), and Kaitlin Blythe (FEI ID 10046212/USA), with the horse Don Principe (FEI ID USA41197/USA), both competed at the CDI3* and CDI-U25 in Wellington, Florida (USA) from 8-12 February 2017. Samples taken from the two horses tested positive for the Banned Substance Ractopamine.

The athletes were able to prove that the presence of the Banned Substance was due to a contaminated supplement and, as a result, the FEI Tribunal accepted that they bore no significant fault or negligence for the rule violations. The Tribunal accepted the agreements reached between the FEI and each of the two athletes, which were submitted on 12 November 2018.

Under the terms of the agreements, the athletes were suspended for three months from the date of notification, 5 April 2017.

The horses were provisionally suspended for two months, starting from 5 April 2017, but as the athletes contested the standard two months provisional suspension at the Court of Arbitration for Sport (CAS), the provisional suspensions were lifted on 8 May 2017. All results achieved by the two horses at the Wellington event are disqualified. In addition, any international results achieved by the two horses between the lifting of the provisional suspension and 4 July 2017, when the provisional suspension would normally have expired, are retroactively disqualified.

The athletes were each fined 3,000 CHF and must pay the cost of the B sample analysis and their own legal costs.

Lyle and Blythe have 21 days to appeal the decisions to the Court of Arbitration for Sport (CAS) from the date of notification of the Final Decisions (18 December 2018).

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Equine Activity Legislation

48 STATES HAVE SOME FORM OF EQUINE ACTIVITY LAW limiting the liability of equine activity sponsors for accidents resulting from risks inherent to the sport.

The only two states with no such law are California and Maryland.

New York's "Safety in Agricultural Tourism Act" covers equine activities.

The Current List:

Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming.

Passage of equine activity liability acts gained momentum in the 1990's

Most, but not all, states require very specific language to be included in contracts or on signs that must be posted in visible locations where equine activities are occurring. It is important to know what the requirements are for states in which you engage in equine activities.