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## **Indiana Court Dismisses Horse-Kick Case Based on Equine Activity Statute**

*By Alexander "Sandie" Pendleton of KMK*

On August 16, 2010, the Indiana Court of Appeals upheld a lower court's dismissal of a personal injury case brought by a person injured when a horse kicked her at a 4-H Club horse show. The court in *Perry v. Whitley County 4-H Clubs, Inc.* held that the defendant had complied with Indiana's Equine Activity Statute, and that the statute provided immunity to the club.

In 2007, the plaintiff, Teresa Perry, was helping out at a 4-H horse show. She had extensive experience with horses and horse shows. The building at which the horse show was conducted had at its entrance a "equine activity warning" sign consistent with the signs required by Indiana's equine activity statute, and Perry admitted later that she had seen the sign. In the course of the show, Perry believed a child who was showing one of the horses was in a dangerous position behind another horse, and when Perry stepped in to try to remedy the situation, her knee was kicked by the horse.

Perry commenced a lawsuit against the 4-H club, arguing that the club was negligent in several ways. The club sought summary judgment based on the Indiana Equine Activity Statute, and the trial court granted summary judgment, finding that being kicked is "an inherent risk" of equine activity, and that there was no evidence of reckless conduct by the club.

On appeal, the court of appeals affirmed. Noting that the Equine Activity Statute had not previously been interpreted in any prior Indiana reported cases, the court looked to decisions from other states interpreting similar statutes. The court first noted that Perry did not attempt to argue that any of the statute's exceptions to immunity (*e.g.*, faulty tack, latent premises defect, reckless disregard, or intentional injury) applied. The court then went on to discuss whether the statute should be interpreted as applying to negligent behavior of equine activity sponsors. The court begins its analysis by noting that the statute does not expressly indicate it protects sponsors from all negligence claims, but then goes on to conclude that a negligence action is precluded if the injury resulted from an "inherent risk of equine activities." Turning to the facts at hand, the court concluded that the unpredictability of horses, and their propensity to kick, are inherent risks of equine activities.

Overall, the decision is a helpful one for businesses and organizations that work with horses. The lesson of the case is that organizations should ensure that they become aware of the details of equine activity and other recreational immunity statutes in their states, and then ensure they structure their activities so as to maximize the chances that such statutes will provide immunity. Equine activity immunity statutes vary considerably from state to state, with some potentially providing substantial protection, and some providing practically no protection. Likewise, many recreational immunity statutes are detailed creating several different categories of protected parties. Recreational immunity decisions often turn on small factual details. Parties wishing to ensure their operations are structured so as to be protected by recreational immunity statutes should review their operations with legal counsel, and obtain a written opinion as to the scope of protection such statutes may provide.

If we at KMK can assist you with protecting your organization from unnecessary liability, do not hesitate to contact us.

*(The information and views discussed in this article are for general information purposes only. An organization that has specific questions as to the effect the above development may have for it should discuss such with its attorney, or with an attorney who is familiar with this area of the law and the organization's specific operations or concerns.)*

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**About Pendleton:** Alexander "Sandie" Pendleton is a shareholder with the Milwaukee law firm of Kohner, Mann & Kailas, S.C., and is the leader of the firm's Sports, Fitness and Recreational (S/F/R) Team. Sandie has over twenty years of experience counseling clients involved in sports and recreational activities, including power sports activities, and is a frequent speaker and writer on recreational liability issues. To learn more about Sandie and the KMK S/F/R Team, visit [www.releaselaw.com](http://www.releaselaw.com).

**About Kohner, Mann & Kailas, S.C.:** At Kohner, Mann & Kailas, S.C., we continue to believe the right to the "Pursuit of Happiness" is a right worth preserving. Our S/F/R Team guides and fights for businesses and organizations that provide recreational opportunities and products, so that our clients are not overwhelmed by liability that might otherwise threaten their continued success (or even existence). Preserving the right is often not an easy or simple task, but we know this mission is an important one to our clients, and to the future of a free society. If you would like to explore whether we can help your organization achieve its mission, contact us. Founded in 1937, KMK provides legal expertise across the numerous areas of law encountered by businesses in the normal course of their day-to-day operations and growth. In addition to our S/F/R services, our services range from high-profile appellate representation and international business issues, to ensuring that critical everyday needs, such as debt recovery, are fulfilled efficiently and effectively. (Please note: KMK case summaries and alerts do not constitute legal advice; for specific legal questions, consult with an experienced attorney.)

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