

# **THE HORRORS OF HAULING, OR “ARE YOU REALLY INSURED?”**

Once upon a time Kindly Equestrian offered to give her friend, and her friend’s horse, a ride to a nearby competition. The friend was delighted and offered to split the cost of the gas as well as the hotel expenses in return, per Kindly Equestrian’s typical arrangement with persons she transported to shows. Early the next morning, they loaded their show gear in the 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 severely injured, as were both horses who were then 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 large 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 negligently 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. But sometimes it’s hard to know what issues you need to even raise with your insurance agent on these coverages. Here’s some help.

## **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. If shown that Kindly Equestrian routinely hauls horses for barter or compensation, it may be determined that Kindly Equestrian’s hauling activities comprise a business not otherwise covered under her general auto policy. This in turn may require her to secure business coverage on the auto.

### **B. What does Kindly Equestrian’s auto insurance cover?**

Let's assume that Kindly Equestrian's Blazer was insured by a rated auto insurance company and its determined it was not being used for a business purpose. If so, and her coverage amounts were sufficient, that insurance would most likely cover: (1) repair or replacement of the vehicle damage; (2) repair or replacement of the vehicle contents, including the show tack which was destroyed; 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 most personal insurance policies contain a specific exclusion for business endeavors. 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.

#### **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. However, to Kindly Equestrian's shock, this trailer coverage may not cover the horses hauled in the trailer. In many instances, the value of the horses can 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 policy to cover any potential harm to the horses while in Kindly Equestrian's care, 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?**

The biggest misconception people have about the Equine Liability Act is that this Act somehow prevents lawsuits from being filed. **IT DOES NOT.** Anyone can file a lawsuit if they can identify basic elements of a legal cause of action against another. The Equine Liability Act merely serves as a statutory defense to assist in dismissing frivolous lawsuits. **However, in this instance, the Act would not even apply!** Note that 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 the horses – it resulted from a car running a red light, and the potential negligence of Kindly Equestrian in mismatching hauling 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.

## **2. INSURANCE IS IMPORTANT!**

I cannot understand why anyone wouldn't consider complete insurance coverage essential in every phase of their lives. **Any defense theory, whether legal or statutory, should never be viewed as a replacement to carrying insurance. YOUR INSURANCE ESSENTIALLY SERVES AS A PREPAID LEGAL PLAN WHERE YOUR POLICY INCLUDES COST OF DEFENSE!** Look at this from a practical standpoint. Costs of insurance policies typically run anywhere from a few hundred to several thousand dollars per year, depending on your requirements and the size of your operation. In the event you are sued, it is difficult for any lawyer to secure a dismissal of the case for much less than \$1,000 to \$5,000 dollars, a sum which typically exceeds the cost of your insurance premium by thousands of dollars. Why? In order to dismiss a case, the lawyer must review the legal documents filed, prepare required legal responses to be filed with the court, perform legal research to identify and brief the case law which supports a dismissal (if any), interview witnesses to secure factual support for the brief, draft and file the brief asking for dismissal, and then appear and argue the dismissal motion before the court. To this must be added various phone calls between the lawyers and court regarding time frames, deadlines, mandatory discovery scheduling, as well as out of pocket costs including copies, telefaxes, filing fees, delivery fees, travel expenses, expert witness costs, etc. If you have no insurance, you pick up these costs. If you have insurance, your insurance company picks up these costs assuming you have complied with all terms of your policy. **Thus there is NO SITUATION WHERE YOUR INSURANCE POLICY DOES NOT REPRESENT ONE HECK OF A DEAL IF YOU ARE SUED!**

In summary, many of us haul horses with no thought as to our exposure or our insurance coverages. In the above example, we see that Kindly Equestrian should have considered: (1) personal auto insurance for the Blazer; (2) potential business use coverage for the Blazer; (3) potential equine Commercial General Liability coverage if she engages in these kinds of activities for compensation on a regular basis; (4) separate auto insurance coverage for the trailer and physical contents; and (5) Care, Custody and Control equine insurance for the horses hauled. Based on this article, isn't it time you call your various agents to be sure you're properly covered before you haul another horse? **(And oh, by the way, in addition to your insurance coverages, it's never a bad idea to have your friends sign a liability waiver and release if you agree to haul their horses, especially when you're doing it as a favor!)**

© Denise E. Farris, Esq. (June 2009) for Prairie Wind Enterprises, L.L.C., d/b/a Equine Business Forms. This article may not be reprinted or reproduced in any manner without the consent of the author. Contact: Denise Farris, Farris Law Firm LLC. (816) 842-0800.

### **DISCLAIMER**

This article provides general coverage of its subject area. It is provided free, with the understanding that the author, publisher and/or publication does not intend this article to be viewed as rendering legal advice or service. If legal advice is sought or required, the services of a competent professional should be sought. The publisher shall not be responsible for any damages resulting from any error, inaccuracy or omission contained in this publication.