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EQUINE LEGAL SUMMARY
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Catanese & Wells, A Law Corporation provides a quarterly newsletter to the equine industry of and concerning legal, tax and business issues for participants in the horse business or sport. www.cataneselaw.com (<http://cataneselaw.com>).

This issue of the Equine Legal Summary focuses on the doctrine of simple negligence in horse related personal injury cases. No effort is made here to explain the interplay of the *assumption of risk* doctrine as a defense in California as that legal doctrine was discussed in the Equine Legal Summary (Spring 2015). When considering any negligence action based on rider injury, care should be given to determine if the assumption of risk doctrine will bar the negligence claim of an injured rider or a personal injury connected with horse activities.

Like many states, California has adopted a standard set of civil jury instructions. The instructions are commonly known as Judicial Council of California Civil Jury Instructions or "CACI." CACI instruction 400 identifies the essential factual elements required to establish a negligence claim. In short, the instruction states – the plaintiff claims that he/she was harmed by the defendant's negligence – to establish this claim the plaintiff must prove all of the following: (i) that the defendant was negligent, (ii) that the plaintiff was harmed and, (iii) that the defendant's negligence was a substantial factor in causing the plaintiff's harm. CACI 401 defines negligence as the failure to use reasonable care to prevent harm to oneself or to others. Moreover, the instruction states that a person can be negligent by acting or by failing to act. It goes on to state that a person is negligent if he or she does something that a reasonably careful person would not do in the same situation or fails to do something that a reasonably careful person would do in the same situation. *The instruction concludes that the jury is to decide how a reasonably careful person would have acted in the situation involving the plaintiff and the defendant.* (The California Supreme Court has ruled that the standard of care in a case is to be decided by the court and after the court formulates the standard the jury applies the facts of the case to determine whether the defendant's actions or omissions did not meet the standard of care. (See *Ramirez v. Plough, Inc.* (1993) 6 Cal.4th 539, 546.)

The negligence standard is a very open standard. Meaning it is a standard that can usually be met by a plaintiff if the plaintiff has good testimony from experts and from fact witnesses. The court will usually rely on the testimony of the expert witnesses to determine the

appropriate standard of care. (As an aside, if you are the plaintiff be sure to retain the most credible expert you can afford to establish your case.)

Since the negligence standard is usually established by the facts of an injury case, defense counsel will employ the defense of assumption of risk before the matter is ever presented to a jury. Great care must be exercised by the plaintiff to avoid dismissal of a negligence claim by reason of the assumption of risk doctrine. On the other hand, if the facts of the case establish "gross negligence" the same will act as an exception to the application of the assumption of risk doctrine. (CACI 425 defines gross negligence as a lack of any care or an extreme departure from what a reasonably careful person would do in the same situation to prevent harm to oneself or to others. And, a person can be grossly negligent by acting or by failing to act.)

When a person is injured in a horse related activity it is very important to immediately document the injury and to obtain expert assistance as soon as practicable to establish the extent of injury and the standard of care. It is also very important to collect any written waivers connected with the equine activity as the written waivers may contain assumption of risk language.

It is recommended that any person injured in a horse related activity contact legal counsel immediately following the injury. Attorneys at Catanese & Wells, A Law Corporation, can be reached via the law firm website at www.cataneselaw.com or at (818) 707-0407.