Special Feature - Will I be successfully sued?

Jane Phillips is the solicitor who acted for Dr. and Mrs. Henley in the infamous Mirvahedy v Henley case. The findings have had ongoing significant legal liability and insurance implications for every horse owner in England and Wales.

In this special feature Jane exclusively provides *Riding Safely* with details of some of the cases she has been involved with over the last two years - brought in Negligence and under the Animals Act - winning 8 out of 9.

Jane told Riding Safely “It just shows that despite Henley and Mirvahedy we can still win cases!”

So the message is, based on these examples, that as long as you haven't been negligent, any case brought against you that goes to court has a strong possibility of being unsuccessful. But remember, being able to demonstrate effective risk management and evidence of record-keeping are the keys to any defence......

What is Mirvahedy v. Henley? Find out more about the case, the Animals Act 1971 and a host of other related information at: http://www.ridingsafely.net/mirvahedy_v_henley.html

Find out more about Jane after the cases......

The cases are:

- Margaret Plum V Chorley Equestrian Centre (5th November 2004)
- Joyce Winkworth V Hargate Hill Equestrian Centre (18th November 2004)
- Dr Faith Holdsworth V Blewbury Riding & Training Centre (4th January 2005)
- Susan Dennett V Patricia Wain (18th March 2005)
- Jenny Royle V Matchmoor Riding Centre (15th June 2005)
- Hannah Sherridan V Glebefield Equestrian Centre (15 & 16 September 2005)

MARGARET PLUM v CHORLEY EQUESTRIAN CENTRE

Mr RECORDER RYAN at BURNLEY COUNTY COURT

5th November 2004

Miss Plum sued Chorley Equestrian Centre for damages for personal injury arsing out of an accident that occurred on 9th July 2000 when she was hacking out with other horses under the supervision of an escort employed by the Centre.

Miss Plum had ridden in her youth and some 9 months or so before the accident had been having regular riding lessons at Chorley Equestrian Centre, from where she had also hacked out.

She complained that she was allocated Digby, a horse with a tendency to bolt; that tendency was known to the Defendants and she was thus assigned an unsuitable horse and that gave rise, when she had an accident to a claim both in Negligence and under the Animals Act.

Having entered a field in the course of a hack, the horse bolted, overtook the other horses in the string and Miss Plum said that despite her strenuous efforts Digby threw her off his back.

According to the Centre the horse had none of the characteristics alleged, and they said that in fact Miss Plum had held her horse back when the group cantered, thus causing him to put in a little buck.

The Judge found Miss Plum’s evidence about the horse no more than “tack room gossip”.

He found that Digby was a suitable horse for Miss Plum. It did not have the tendency to bolt or gallop away as alleged by Miss Plum. He found that she had pulled sharply on his mouth and the horse had reacted normally by bucking.

He did not find that the damage to Miss Plum was likely to be severe – the mere fact of serious injury does not address that issue. There was no evidence to show that accidents occurring in this way are likely to result in severe damage.

He did find that bucking when pulled in the mouth was a characteristic found in horses in particular circumstances which the Centre had conceded. This, he said, would have been known by the Centre.

However, he found that the risk of being unseated when riding is one which any rider who is competent to canter and hack out accepts. Riding is a pursuit involving the control by a rider with the aids of rein, leg seat and crop of a horse with its own mind and physical attributes. That relationship and activity between two living beings cannot be precisely predicted or judged to the second or centimetre. The occurrence of an accident in such a manner is precisely the risk which a rider undertakes.

Even, therefore, if the Judge had been persuaded, which he was not, that the case fell within s 2 2 of the Animals Act he was satisfied that the claim fell squarely within s 5 (2).

The claim was dismissed.

Mr C W S Lane was the expert for the Defendant

Mr Burns was instructed by the Claimant in person

Mr Ben Compton was instructed by P Jane M D Phillips of Tavistock for the Defendant

---

JOYCE WINKWORTH v HARGATE HILL EQUESTRIAN CENTRE

HH JUDGE MORT at OLDHAM COUNTY COURT

18th November 2004

Joyce Winkworth sued Hargate Hill for damages for personal injuries arising out of a riding accident which occurred on 17th August 2000. She had ridden as a child and was having her 2nd lesson at the centre riding Mojo in canter when she fell off.

She sued in Negligence saying that she had been forced into joining a lesson with a more experienced rider, and the horse she was riding was unsuitable in that it bolted or ran away from her. She was critical of her instructress who had qualified that day.

The Judge found that riding is an activity that carries the foreseeable risk of people falling off horses. He gave examples of what could happen in his view even at the most basic level. Hence basic minimum steps are obviously protective clothing and a soft landing. “If somebody comes into a riding school what can they expect?”

There was, he found, a duty to provide a safe horse, to assess the person who was to ride the horse and then to supervise with reasonable skill and care. He pointed out that over 50% of all riding instructors have no qualifications beyond experience. This instructress had years of riding experience and teaching experience although she had only formally qualified that day.

The other rider in the lesson was of the view that both were of the same standard and that the horse was not frisky, describing her as calm and obedient and safe to ride.

Mr Hindle, the Claimant’s expert, criticised the horse for being too big. “I think it is really like moving from a Mini to a Land Rover to expect her, if she has as little experience as she says, to have ridden that horse.”

The Judge was not persuaded, finding Mojo to be a fairly typical school horse.

He also found the instructress to be a careful one. He noted her examiner's comments on her examination sheet and found that she would have been alert that day having just passed her examinations.

He was satisfied that the Claimant, who was a poor historian, was properly assessed by the instructress as being competent to canter.

The case was dismissed.

Mr Harry Hindle expert for the Claimant

Mr C W S Lane expert for the Defendant

Mr Wood instructed by Warings of Blackpool for the Claimant

Mr Nathan Tavares instructed by P Jane M D Phillips of Tavistock for the Defendant

---

Dr FAITH HOLDSWORTH v BLEWBURY RIDING & TRAINING CENTRE

HH JUDGE WADE at SWINDON COUNTY COURT

4th January 2005

Dr Holdsworth sued Blewbury for damages for personal injuries she sustained when she fell off a horse when out on a hack on 6th June 2002. She and some colleagues from her medical centre were participating in an equestrian "away day" which had been arranged some time in advance. There were 16 participants some of whom had little or no experience and were led around a village, while the more experienced group of 6, including Dr Holdsworth, went out on the nearby Downs.

Dr Holdsworth sued the Centre in both Negligence and under the Animals Act.

She complained that she had been provided with an unsuitable horse and had not been properly assessed nor properly briefed before the hack. When they arrived at the centre the horses were not ready for them and she and her witnesses gave a picture of general incompetence.

The party were all mounted in the indoor school and separated into groups in accordance with their ability. Dr Holdsworth had said she was experienced but had not ridden for a number of years. She was riding Diamond who whilst being assessed in the school spooked a few strides and was brought under control by Dr Holdsworth. She declined a change of mount although others of her party were given different horses during the assessment.

The escort said she gave her own personal briefing before the party left the yard.

Dr Holdsworth complained that her horse misbehaved all the way to the Downs – shying at dustbins – to such extent that she felt worn out when she arrived at the Downs. Mr Mackie the joint expert said he would have expected the escort to have noticed this and the rider to have complained.

Later whilst trotting on the Downs, Dr Holdsworth overtook the escort at canter and then complained that her horse bolted. Some of her colleagues chased after her.

On the evidence the Judge found that the ride had been entirely appropriately and efficiently organised; the escort acted quite properly and professionally. Dr Holdsworth failed to tell anyone that she lacked confidence to ride Diamond or was having trouble with him. She decided to canter past the escort without reference to her and she herself led to the unfortunate situation where she was unable to control the horse and then came off him.

The claim thus failed in Negligence.

The Judge then considered the Animals Act. S 2 2(b) and (c) were conceded by the Defence and the only live issue was s 2 2(a) and the Judge thought it perfectly obvious that anyone falling from a galloping or bolting horse would sustain severe injury – Dr Holdsworth broke her ankle which the Judge held was a severe injury. NB - the Judge accepted Mr Mackie's evidence that falling off a horse at canter would not normally cause a serious injury.

The Judge then turned to s 5 – the statutory defences. He found that the accident was entirely the Claimant's own fault. He was also satisfied that there were risks inherent in horse riding, including the risk of injury. He thought that was perfectly obvious agreeing with Mr Mackie when he said "If you ride you do fall off". By implication, there is a risk of injury in falling off.

The claim was dismissed.

Mr J Mackie was the joint expert

Mr Richard Stead instructed by Cartwrights Insurance Partners of Bristol for the Claimant

Mr Ben Compton instructed by P Jane M D Phillips of Tavistock for the Defendant

SUSAN DENNETT v PATRICIA WAIN

JUDGE TOWNEND at PRESTON COUNTY COURT

18th March 2005

Mrs Dennett sued Mrs Wain for damages for personal injuries arising out of an accident which befell her at Earnsdale Farm Riding Centre on 2nd March 1998.

Mrs Wain was loose schooling a horse owned by Heather Francis in the indoor arena at Earnsdale in the presence of Mrs Francis who was watching the lesson. Mrs Wain was an experienced but amateur horse woman who had loose schooled horses before and had offered to loose school Laddie on this occasion as the horse had been out of work sick. She knew Laddie to be a horse of good temperament.

Suddenly and without warning Laddie turned and jumped over the closed gate of the arena, knocking it over and in the process injuring Mrs Dennett who was standing with her back to the arena. Originally Mrs Dennett said that was because Mrs Wain had waved the whip behind the horse but in evidence her husband said it was because the whip had been cracked behind the horse.

Mrs Dennett sued both in Negligence and under the Animals Act.

The claim in Negligence failed, the Judge finding that Mr Dennett was mistaken in his belief that Mrs Wain cracked the whip behind Laddie just as he was passing the gate thus encouraging him to leap over it. He also discounted all the possible reasons that Laddie might have jumped out as put forward by the Claimant's expert Mr Harry Hindle preferring Mrs Goldsmith the expert for the Defence who said that horses just act that way sometimes, although she said that such behaviour was extremely rare.

The Judge found that Mrs Wain was the keeper of the horse within the meaning of the Act as she was in control of the exercise notwithstanding that she was exercising Laddie in the presence of Mrs Francis.

The Judge also found that the horse behaved in an abnormal way and that any damage caused by the horse acting in such a way was likely to be severe.

However, he found that Mrs Wain had no knowledge of these characteristics. Mr Hindle did not believe in the practice of loose schooling and Mrs Goldsmith, who in her career had taught pupils at College to loose school had only known of 3 horses to jump out of the arena in 40 years. As such he found that Mrs Wain would not have been aware of such characteristics and could not have attributed them to Laddie.

The Claim was dismissed.

Mr Harry Hindle was expert for the Claimant

Mrs Jane Goldsmith FBHS was the expert for the Defendant

Mr Platts of counsel for the Claimant instructed by Farleys of Blackburn

Mr Jonathan Hand of counsel instructed by P Jane M D Phillips of Tavistock Devon for the Defendant

---

JENNY ROYLE v MATCHMOOR RIDING CENTRE

HH JUDGE BLOOM Q C at MANCHESTER COUNTY COURT

15th June 2005

Jenny Royle sued Matchmoor Riding Centre for damages for personal injuries sustained when she fell from her mount when out on a hack with a friend on 2nd March 2003.

Jenny Royle had ridden as a child and was then 34. She was happy to go out on a hack under supervision.

They were riding across the moor when, she said, having walked trotted and cantered successfully, the hack went through a gateway. She and her friend stood waiting for the ride to pass through the gate. Her horse was stationary with his head down grazing when without warning the escort shut the gate noisily causing her horse to shoot off straight into canter. She fell off.

Matchmoor's escort and the other riders on the hack disagreed with Mrs Royle's recollection.

They all said that the escort had waited until the ride was through the gate; the ride had walked on and the escort asked if everyone wanted to canter. No one dissented. The escort made eye contact with all the riders and then set off into canter.

The Judge considered that the escort was not a risk taker. He accepted the proprietor's assessment of her that she never disregarded instructions. He found the proprietor a very conscientious and dedicated woman who had been in business many years and was committed to the industry and who would not give an inaccurate picture of her valued employee. He found that the ride had been conducted in accordance with normal procedures.

The case was dismissed.

Mr J Mackie appeared as expert witness for the Claimant

Mr C W S Lane appeared as expert witness for the Defendant

Stevensons solicitors represented the Claimant

Mr Ben Compton of counsel instructed by P Jane M D Philips of Tavistock Devon for the Defendant

---

HANNAH SHERRIDAN v GLEBEFIELD EQUESTRIAN CENTRE

HH JUDGE BULLIMORE at SHEFFIELD COUNTY COURT

15 & 16 September 2005

Hannah Sherridan (aged $9^{1/2}$) sued Glebefield Equestrian Centre for damages for personal injuries which befell her when she fell from a pony named Rosie on 23 September 2000. The only issue in the case was whether or not the riding hat was correctly fitted and/or adjusted and whether it had become dislodged and caused Hannah's injuries.

Hannah fell over Rosie's shoulder when she spooked and moved unexpectedly. She made no criticisms of the way the lesson was conducted nor of the pony.

Glebefield provided Champion riding hats for its customers in various sizes which were clearly marked on the back of the helmet.

The child said that on the day of the accident she chose the correctly market hat and put it on. She said it was so big that it fell forwards as she walked down hill and backwards as she walked uphill and she complained about the fit to the girl who was leading her.

Immediately after the accident the hat was noted by the proprietor to be correctly on the child's head. It was horizontal with the rim above the eyebrows.

Expert evidence was given by Charlie Lane for the Defendant and Peta Roberts FBHS for the Claimant.

Mrs Roberts was of the view that the hat should have fitted snugly and that more than a visual check of the hat should have been made. A hat would only move over the eyes if it were miles too big but if the hat was only slightly loose it could still slip onto the cheek and cause injuries.

Mr Lane pointed out that hat sizes overlap. If a hat was obviously too big it would be seen. The hat should not move in a fall. The fitting of the hat on the head not the adjustment of the straps was the important thing.

On the evidence the Judge found that the hat was not dislodged and that the injuries were probably caused by a glancing blow from the horse's hoof.

The claim was dismissed.

Mr C W S Lane equine expert for the Defendant

Mrs Peta Roberts FBHS for the Claimant

Mr Gordon Exall instructed by Walker Morris of Leeds for the Claimant

Mr Nathan Tavares instructed by P Jane M D Phillips of Tavistock Devon for the Defendant.

More about Jane Phillips……

Jane was admitted as a Solicitor on 2nd July 1973, qualified to practise in England and Wales.

In July 1994 she was appointed an Assistant Recorder on the South Eastern Circuit and became a Recorder on the Western Circuit in August 2000. This appointment was for a fixed term of 5 years which has recently been renewed for a further 5 years. She sits as a Deputy Circuit Judge in the Civil and Family divisions.

For over 23 years she has concentrated on defending Equine cases of all kinds, acting for Insurers and a number of major syndicates and agencies, while continuing to conduct other aspects of personal injury cases.

She acted for Dr. and Mrs. Henley on the instructions of the Insurers to the Pony Club in the House of Lords case of Mirvahedy v Henley, and is considered to be one of the leading authorities on the Animals Act.

Over the last 12 months she has settled a number of cases on terms favourable to Insurers, and was successful in obtaining Judgments for the Defendants in 9 out of 10 cases brought in Negligence and under the Animals Act taken to trial in various County Courts throughout England.

Jane has been interviewed on national and local television and radio in connection with the Animals Act and on defending Equine cases.

From January 2000 until January 2005 she was a Disciplinary Steward of the BSJA retiring by rotation.

She is the Solicitor on the Government's Working Party on the Equine Industry, set up by Alun Michael to look into the steep rise in insurance premiums and the effect this has had on the Industry. In April 2005 she was invited to present a paper to the BHS Think Tank Seminar to seek a way forward for the Industry.

Jane was the legal representative on the working group on Human First Aid and Acute Trauma in the Equestrian Industry, set up under the auspices of the British Equestrian Federation.

She lectures on Litigation and Health and Safety Law to the BHS, BSJA, the Pony Club, and other Equine disciplines, and also at various Seminars set up by Insurers. In November 2000 she presented a paper at the Equine Event 2000 held at Stoneleigh.

For 20 years she has given talks all over the country, speaking at numerous events including proprietors of BHS Riding Stables and Livery Yards, the Pony Club, and the BSJA.

Jane ran the BSJA Legal Help line and advised and assisted in the preparation of the generic Health and Safety Code of Conduct and Risk Assessment for the BSJA.

She now concentrates on defending cases for Insurers and no longer act for private clients.

Jane can be contacted at:

P. Jane M.D. Phillips Solicitors, 18 Market Street, Tavistock, Devon, PL19 0DE

This special feature should be read in conjunction with some important information that can be found at: http://www.ridingsafely.net/important.html

© Riding Safely