Special Feature - Mirvahedy v. Henley

In March 2003, horse owners Andrew and Susan Henley were held strictly liable following a Law Lords' interpretation of the Animals Act 1971, for injuries to motorist Hossein Mirvahedy in an accident after their horses escaped from a field. This case has set a precedent and led to insurance premium increases for every horse owner in England and Wales.

Five Lords considered the appeal on Thursday 20 March 2003; Lord Nicholls of Birkenhead, Lord Slynn of Hadley, Lord Hobhouse of Woodborough, Lord Scott of Foscote and Lord Walker of Gestingthorpe.

Lord Nicholls of Birkenhead led and gave an outline of the facts and the issue to be considered:

“Shortly after midnight on the night of 28-29 August 1996 Hossein Mirvahedy was driving home from his work as manager of a hotel in Devon. He was driving along a dual carriageway stretch of the A380 from Torquay to Exeter. His car came into collision with a horse when it ran across the road and crashed into the car. He suffered serious personal injuries.

The horse belonged to Andrew and Susan Henley. It had escaped from the field where it was kept. Dr and Mrs Henley lived about a mile from where the accident occurred. In an adjacent field they kept three horses, of which the horse involved in the accident was one. On the night of the accident all three horses stampeded out of a corner of their field. They pushed over an electric wire fence and a surrounding wooden fence, and then trampled through a strip of tall bracken and vegetation. Something seems to have frightened them very badly, but nobody knows what it was. The horses fled 300 yards up a track and then for a distance of almost a mile along a minor road before reaching the busy A380 road.

Such behaviour is usual in horses when sufficiently alarmed by a threat. They attempt to flee, ignoring obstacles in their way, and are apt to continue in their flight for a considerable distance, even beyond the point where the perceived threat was detectable.

Mr Mirvahedy brought a claim against Dr and Mrs Henley as keepers of the horse. He based his claim in Negligence. He said Dr and Mrs Henley had not fenced the field properly. The judge, Judge O'Malley sitting in the Exeter County Court, rejected this claim. No appeal was pursued from this decision. Mr Mirvahedy also advanced a claim under section 2 of the Animals Act 1971. He asserted that, even if they were not at fault, Dr and Mrs Henley were liable for the damage caused by their runaway horse. Under the Animals Act they were strictly liable. They were liable independently of fault. That claim, too, failed before the judge. It succeeded on appeal to the Court of Appeal. The court comprised Dame Elizabeth Butler-Sloss P and Hale and Keene LJJ. Dr and Mrs Henley then appealed to your Lordships' House”

He went on to say “The appeal raises one question: is the keeper of an animal such as a horse strictly liable for damage caused by the animal when the animal's behaviour in the circumstances was in no way abnormal for an animal of the species in those circumstances?

Lest there be any misunderstanding one point should be clarified at the outset. Considered as a matter of social policy, there are arguments in favour of answering this question yes, and arguments in favour of answering no. It may be said that the loss should fall on the person who chooses to keep an animal which is known to be dangerous in some circumstances. He is aware of the risks involved, and he should bear the risks. On the other hand, it can be said that, negligence apart, everyone must take the risks associated with the ordinary characteristics of animals commonly kept in this country. These risks are part of the normal give and take of life in this country.

These considerations, and other arguments of this nature, are matters for Parliament. They are not matters for this House acting in its judicial capacity. It is not for the courts to form a view on which of these arguments seems the more weighty when Parliament has already carried out this exercise. Parliament must be taken to have weighed the various factors, and balanced the conflicting interests of those who keep animals and those who are injured by them, when enacting the Animals Act 1971. The answer to the question I have posed lies in interpreting the provisions of this Act, and in particular section 2(2), in accordance with established principles of statutory interpretation.”

This extract is from Hansard and the full details of the judgement can be found at:
http://www.publications.parliament.uk/pa/ld200203/ldjudgmt/jd030320/mirva-1.htm

Lord Nicholls, Lord Hobhouse and Lord Walker dismissed the appeal. Lord Slynn and Lord Scott allowed the appeal. Therefore by a three to two majority the appeal was dismissed.

Find out about differences between English and Scottish law - in Scotland the equivalent act is the Animals (Scotland) Act 1987: http://www.bto.co.uk/articles/INS_article_7.htm
Source: Brechin, Tindal, Oatts Solictors

See a copy of the Animals Act 1971 (ch 22) at: http://www.swarb.co.uk/acts/1971AnimalsAct.shtml
Source: swarb.co.uk

Implications of the Judgement and action being taken.....

Industry unites to tackle insurance

The scenario of horse owners being held strictly liable for any accident involving their animal is being challenged, as ABIGAIL BUTCHER reported in Horse and Hound on 8 December 2005…….

THE Country Land and Business Association (CLA) and British Horse Society are uniting to call a halt to rising equestrian insurance premiums.

The two organisations met last Friday to discuss a way forward on their separate campaigns, following moves by the CLA to push forward amendments to the Animals Act relating to owners' strict liability.

"This was the first real and meaningful discussion I have had with the CLA in my time here," said BHS chief executive Graham Cory. "We've decided we must cooperate and pool our resources to achieve change."

The Law Lords' interpretation of the Animals Act 1971 in the Mirvahedy case - which resulted in considerable compensation - set a precedent that, added to the UK's increasing compensation culture, and has set insurance premiums spiralling.

In March 2003, horse owners Andrew and Susan Henley were held strictly liable for injuries to motorist. Hossein Mirvahedy in an accident in Devon in 1996, after their horses escaped from a field.

Last year, the CLA began a concerted push to remove strict liability from owners or keepers of horses involved in an accident where there has been no negligence.

"We're looking to suggest that people who own horses aren't strictly liable under the Animals Act unless they've been negligent," said CLA legal head Dr Karen Jones, who last week met with rural affairs minister Jim Knight to discuss ways in which the Act could be clarified and amended.

Dr Jones continued: "Going through at the moment is the Compensation Bill, which talks about clarifying when people are liable for accidents. We want it to say that owners of a normal animal behaving normally should not be liable - accidents can happen, as any horse owner knows.

"The government is very receptive. It recognises there is a problem that needs to be sorted."

Last week, Jim Knight told H&H he welcomed the CLA's campaign, but added: "I would not wish to absolve all horse, or other owners, from the responsibility of taking suitable precautions to protect innocent members of the public from the possibility of injury. Subject to that proviso, I am committed to exploring within government what action might be taken to resolve this situation."

How to tackle insurance hikes is discussed in the new British Horse Industry Confederation Federation strategy. An industry-led working group, chaired by the BHS - together with DEFRA, the Association of British Riding Schools and the Association of British Insurers - has also, for the past two years, discussed ways the horse and insurance industries can work together to reduce risks and rising premiums. The BHS has now invited the CLA to join that group, both parties recognising they must use the weight of the whole industry to effect change.

Barry Fehler, director of South Essex Insurance Brokers, part of the working group, welcomed the move.

"There are two ways forward - one is to overrule the precedent set by the Mirvahedy case, the other is to clarify the Animals Act," he said. "The insurance industry has been looking for a suitable substantial case with which to overrule the Mirvahedy case."

According to Fehler, insurance rates have stabilised in the past year, and there is no sign of a rise in the immediate future. "If there's clarification [to the Animals Act] it does make it easier to deal with difficult cases that would see a possible reduction in premiums," he said.

Simon Mackaness, director of THB Equestrian Group, also welcomed clarification, saying: "Anything that helps reduce the legal liability of the assured or the horse owner has to be of benefit." But he added: "As far as lowering premiums, it's hard to comment without knowing exactly what will be changed and the ramifications.

"We have to look at it from the different angles - legislation is interpreted in different ways, for example, the Animals Act has been interpreted in very different ways from when it was originally drafted."

Cory says the next step forward is "more talks" with the CLA, to ensure the case is "as robust and well argued, and backed up with as much evidence as possible".

Richard Jarman, CLA head of communications, added: "This is a really positive step forward. It wasn't that we didn't want to work with the BHS, we just had members chomping at our heels to get things done."

Battling insurance in Wales

INGRID Evans runs Llandwana Stables, a small trekking and livery business in Pembrokeshire.

Over the past two years, her insurance premium has risen by 200% - from £2,000 to £6,000 after an incident that was out of her control.

While trekking with a mother and her two daughters, two loose dogs [owned by tourists] ran at the horses and, in a natural show of fear, the horses spooked.

Three of the four riders, including Evans, fell.

"We were just walking up the bridleway in complete control, it was a real shock," recalled Evans.

Two years after the incident, Evans received a claim from the mother, including medical evidence of injury. Evans's insurance company settled out of court, but then her insurance premiums began to rise.

Evans contacted her solicitors to determine whether she could hold the owners of the dogs liable and was told her insurance company could settle the matter as it saw fit. And settling out of court, a cheaper option than fighting a claim, is often taken.

Evans received two further claims from the daughters, one of whom did not fall off her horse. Evans's insurance company has settled one claim out of court, but is waiting for the results of the second. But as the second is processed, no other insurers will take her on and her premiums are now prohibitively high.

"I feel this situation is disgraceful, but what can I do?" asked Evans. "I have to either keep paying an extra £4,000 a year for something that wasn't my fault or the alternative is to close the stables."

Source: Special Report in Horse & Hound Magazine 8 December 2005

Find out more about the Compensation Bill from the Department for Constitutional Affairs at:
http://www.dca.gov.uk/legist/compensation.htm#b

National Equine Forum update 2006

At the National Equine Forum held on 22 March 2006, Minister for the Horse Industry, Jim Knight said he was sympathetic to complaints from horse owners about the infamous Mirvahedy insurance case.

“I am keen to explore whether the effect of Mirvahedy on the 1971 Animals Act can be addressed. My officials are already working on this, with a view to possibly supporting an amendment to the 1971 Act. We expect to go out to consultation on this issue soon.

The REAL facts about public liability insurance

‘It can cost £20,000 to prove that someone making a claim is lying’

Find out more about insurance issues from the South Essex Insurance Brokers at:
http://ridingsafely.tripod.com/sitebuildercontent/sitebuilderfiles/seib_nov04_newsletter_extract.pdf

Extract from SEIB Newsletter November 2004

Tackling the Australian insurance crisis of 2002

Parallels? Were you aware that in 2002 many Australian riding establishments ceased trading because they could no longer get public liability insurance at an affordable price, if at all?

Find out more at: http://ridingsafely.net/australiancrisis.html

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