

TAKE COVER

Limit your club's liability with good management and insurance

by Avery S. Chapman, Esq.

Consider this scenario: During the final game of a polo tournament Enrique Doe, the polo-playing cousin to the infamous John Doe, rides down the field at a private club located on Spellman "Spo" N. Sor's Polo4Ever Farm and takes one of his famous, tremendous swings at goal. Unfortunately, Enrique is also known for the inaccuracy of his swing, and the errant ball goes careening into the stands, where it bounces off a spectator, knocking her out. Enrique, watching the whole scenario instead of where he is going, then rides into another player, knocking him over and unconscious. Looking at his unconscious friend, Enrique accidentally then runs over a boy scout volunteering as the

flag boy, at which point in time Enrique is dumped by his pony. The pony then runs wild, first running past the trailers, where spectators are admiring the pony lines, causing one pony to flip over onto an admirer, flattening her. The pony then continues to run through a polo lesson on the adjoining stick and ball field, causing a visiting instructor and a student to both be tossed to the ground, breaking their collarbone and arm, respectively. The loose pony, not yet spent, goes running through a pasture gate, liberating several boarder's polo ponies, and they all then run over Spo's employee cutting the grass on their way out the main driveway of the farm onto State Road 444, where the ponies causes a traffic accident with injuries as drivers swerve to avoid the ponies. The ponies then return to the field where they calmly nibble the turf.



To protect the club, be sure all players and riders sign a liability waiver. Remember, parents must sign for minors.

WARNING! READ CAREFULLY! IMPORTANT!
**Waiver of Rights for Dangerous Conditions
on Premises**

By entry onto the grounds of Royal Palm Polo Club (RPP), the entrant, and all in its party, are deemed to be aware of their proximity to horses and equine activities, including the sport of polo, and that such exposes them to the risk of serious injury or death, including without limitation the risk of being kicked or trampled by horses, and the risk of being hit by polo balls or mallets. All persons must keep a safe distance from the stable areas and any equine activities conducted on RPP Property. Further, that the entrant and all in its party hereby specifically indemnify RPP from any and all claims, damages, demands, actions, or causes of action in law or in equity on account of, but not limited to, damage to property (including automobiles) and bodily injury or death to any party caused and/or resulting from any equine activities, including but not limited to a polo match.



An observer of the obvious mayhem wrought might wonder, is Enrique insured for all this? The more contemplative observer will also wonder: who else might be held responsible for all this and are they insured? Let's break it down then.

Hopefully Spo N. Sor's Polo4Ever Farm had the proper statutory notice posted at

should have been very specific, describing the types of activities that were to be covered. When Spo filled out his application, he should have disclosed that he was having polo games and not just training and stick and ball at Polo4Ever Farm. The more inclusive the description of the covered activities are, the less likely

liability policy covered spectators of the covered activities. If Spo sold tickets to the polo, then perhaps Spo remembered to include the appropriate ticket disclaimer language on the reverse of the ticket that is allowed in the State of Confusion where Spo's farm is located. Absent that disclaimer and absent the statutory sign,



the entrance, warning spectators and all others that liability is limited. Also, Enrique and all the other participants should have signed a liability waiver, holding Spo and his family and others harmless. Unfortunately, it appears that Enrique's groom took out the fence, gate and box of liability waivers on the way in, so that they were two feet underwater in a ditch, and no one signed the liability waivers. Therefore, we hope Spo had, at the very least, a general liability policy in the amount of \$2 million or more that specifically covers competitive polo matches and all other horse and polo activities. The language of the policy

A disclaimer on the back of tickets can help limit liability if spectators get injured.

an insurance company is going to find a way to avoid or decline coverage.

There are some companies that offer liability policies specifically tailored to equine activities because their companies will not cover polo activities under general liability policies. Provided the covered activities are correctly disclosed and described, the equine or farm liability policies are better products to cover the Enriquegeddon-type scenario.

There should have been another statutory sign near the spectator area. However, because of the necessity of the 1000 foot raw bar and tequila shooting station Spo liked to have at his polo games, the sign was taken down. Hopefully, therefore, Spo disclosed his plans to have spectators present on his farm and that the

Because of the danger, kids should not be allowed to flag polo games. Adults should sign waivers.

the general or equine liability policy becomes the first line of insurance defense. One note on the general liability policy—if any sort of commercial activities occur on the premises to be covered, they need to be disclosed to the agent at time of application, and specifically included in the policy or they will not be covered and the company will deny coverage. A commercial liability policy includes more risk and a correspondingly higher premium, but that policy would be required in the event commercial activity occurs at the farm.

So the injured spectator will first look to the general liability policy. One would hope

that Spo, as the owner of Polo4Ever Farm, also had the foresight to own at least one of two different umbrella policies, which would kick in after all other policies, but would provide a nice safety net for Spo. The first would be a farm umbrella policy, covering all other activities at the farm. The second would be a personal umbrella policy, which would personally cover Spo for liability in his many activities, not just polo. Carry a \$1 million policy at a minimum, but \$2 million is better. The umbrella policies generally include cost of defense coverage and other coverages which are not included on primary liability policies.

What about the other injured player? It would have been helpful if he had signed the liability waiver, but that didn't happen. Therefore he is also going to look to Spo's liability policy, as well as to Enrique. If the player was killed, then a spouse, family member or personal representative might pursue a claim as well. However, all of those folks would be bound by the liability waiver signed by the deceased player.

Spo, always trying to save a dollar to spend on the raw bar, instead borrowed a waiver form from his friend in the State of Bliss, but that form did not comply with the requirements of the State of Confusion and therefore did nothing for Spo. We therefore hope his general liability policy covered the polo tournament. Thankfully, Enrique paid the United States Polo Company's excess personal policy premium of \$25 each year, and he can look to coverage from his friend's and other's claims, but only up to the coverage limit of that policy. Spo should have insisted that all of his polo participants, as well as any visiting instructors, be members of the USPC and carry that excess personal policy.

Now, what about the flag boy? That's going to be tough. Mother and Father are going to look at both Enrique and Spo, so one hopes Enrique's umbrella policy has coverage amounts that will cover multiple claims at once—the injured player also



Make a point to be sure spectators are at a safe distance from the playing field and are aware of the dangers of errant balls coming off the field and horses moving on both sides of the boards.

looking towards him as well as Spo, who is getting sued by Mother and Father. If the case does not settle, Spo is going to have a hard time explaining at trial why having a minor flag the game was a good idea. Spo will not be able to protect himself from liability by producing the waiver the boy signed earlier in the week, because minors cannot bind themselves to contracts.

The visiting polo instructor should have provided proof of her instructor/trainer's insurance to Spo when she came to Polo4Ever Farm. Every polo instructor giving lessons should carry that policy and Spo, as the owner of the farm, should insist on it for individual and clinic instructors. This is in addition to the coverage Spo may carry for the farm.

The student may look to the instructor, Spo and Enrique for coverage, but with the instructor's insurance in place, at least that policy may contribute to the coverage. If the instructor was part of a polo clinic Spo had allowed on his property, then sponsor of the clinic should have provided Spo with a liability

policy that specifically names Spo as an additional, named insured.

The squished pony admirer will look to both Spo and Enrique. It would have been better if the spectator was not right next to the pony lines, but the reality of Spo's operation is that her presence by the pony could not likely have been prevented. All the more reason for Spo to carry the correct type of liability policy. Spo's employee will look first to the worker's compensation



Signs on the property, in both player and spectator areas, helps warn of the danger of equine activities and may limit liability. Laws differ by state so be sure to check the laws where your club is located so you are properly covered.



Dogs and polo seem to go together, however if your club allows loose dogs, and someone is bitten, scratched or knocked down, the club may be held responsible.

policy Spo should have, under the law, been carrying. Absent that policy, the writer of the general liability policy may find a way to decline coverage.

The drivers on State Road 444 will likely file claims with their auto insurance companies who will look to Spo and

Enrique as well, aiming towards their general liability and excess liability policies. If claims are made by the drivers upon the owners of the errant ponies, the boarders will also look to Spo primarily; one again hopes that care, custody and control insurance was also previously

purchased by Spo or included in the liability policy. Finally, if Polo4Ever Farm had been an incorporated entity, then it would have been prudent for Polo4Ever Farm to have carried officer's and director's insurance as well.

This is not to say insurance is the only

solution to Spo and Enrique's liability woes. A healthy mixture of legal asset protection and estate planning, as well as corporate structuring goes a long way to addressing issue gaps in the insurance coverage.

One of the biggest issues is when an insurance company denies coverage or declines defense because of a supposed exception to the policy. Now the policy holder is stuck litigating insurance coverage on the one hand while defending a lawsuit from the injured party on the other hand. Many times preemptive legal work can prevent or greatly diminish exposure because insurance will not protect completely.

The outcome for Spo and Enrique? After some years of litigation, hopefully Spo holds onto his farm and Enrique his horses, truck and trailer. They would have slept better during that time had they planned ahead. ♦

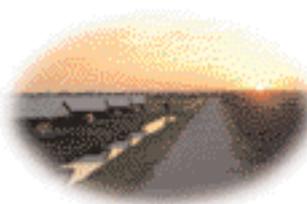
Avery S. Chapman, Esq. is a principal of Chapman & Galle, PLC of Wellington, Florida, where he resides in his office, venturing out to play polo when he can. He can be reached at ascsq1@cs.com

IS YOUR
RIG
CHUKKERED
OUT?

See Tony Coppola for:
 ¥ Four Star Aluminum Trailers
 ¥ Hannover Steel Trailers
 ¥ New and Used Trucks/Trailers
 Available at All Times

Call Tony:
 (561) 793-6422
 or

THE DANIEL AND HENRY CO.
 INSURANCE AND RISK MANAGEMENT




FOCUS ON YOUR LOVE OF THE SPORT-
 WELL FOCUS ON THE REST.

For all of your polo club & farm
 insurance needs, contact
 Steve Orthwein Jr.




OrthweinS@DanielandHenry.com
 561-951-1492 or 314-444-1906