

Care, Custody and Control

By Robert A. Hoffa, Esq.

You may have heard the term "care, custody and control" and wondered what does it mean. Have you ever asked yourself, do I need it? How does it apply to me? You assume because you have a commercial general liability policy that you are covered in all circumstances and that to obtain care, custody and control insurance is merely an additional insurance policy and premium payments.

Care, custody and control insurance is a policy which applies to horses in your care, custody and control whether for training, showing or boarding. The insurance applies specifically to horses and any injuries or harm they may sustain.

Unfortunately most general liability policies specifically exclude coverage when there is damage or injury to personal property of another in the care, custody or control of the insured. Your commercial general liability policy will apply to any injuries caused by the horse but not to the horse. This is a supplementary insurance which is normally obtained by trainers or boarding facilities who are going to keep a horse owned by another person at their facility. The policy can protect you for up to a stated value or as a blanket coverage for a number of horses. My recommendation to my clients when they have care, custody and control insurance is to have a written agreement with the owner of the horse as to the stated value. This may eliminate a dispute as to the value of the horse that may be injured or destroyed. I usually suggest that a periodic review of the value between the trainer or boarding facility and the owner occur to eliminate disputes overvalue. With the value of horses escalating as quickly as the market has, I usually recommend a review every three months on young horses in training.

Care, custody and control coverage requires the insurance company to defend you in a suit that has been brought as a result of physical loss, injury or harm to the horse so long as the horse is covered by the policy. It also requires the insurance company to pay the costs of an attorney to defend you in this suit and any judgment or interest that may be entered against you so long as the judgment is within the policy limits.

To receive the benefits of coverage, there are conditions and requirements that you the insured must meet. Each insurance policy may be different. However it is normally required that you provide the horse with the sufficient and proper amount of food, water, shelter and veterinarian care. Likewise, you can not use the horse for any purpose of which the owner has not specifically provided authority. Your care and training must be acceptable within the standards in your specific industry or discipline.

As with all policies, there are exclusions. Most policies exclude coverage if there is an intentional slaughter of the horse by you, the owner or any of either you or the owner's agents. This exclusion will not apply if the insurance company has agreed to the destruction of the horse or has accepted a veterinarian certificate indicating that the suffering is incurable and that for humane purposes the horse should be destroyed. Another exclusion arises if you are violating or breaching a statute regulation or ordinance whether it is federal, state or local. An example of this would be if you are not zoned for boarding and training horses on your farm and do so in violation of the local zoning code. Likewise, if you breach a trade regulation or standard practice in your industry, coverage may be excluded. In other words, if your standard of care is below what is acceptable for your industry, you may not be covered even if you have this type of policy in place.

Another fairly standard exclusion is the mysterious or unexplained disappearance of the horse. The Markel policy defines mysterious or unexplained disappearance as property that is missing but there is not physical evidence to show what happened to it. For example, if a horse has been stolen from a pasture and there are no visible signs of tire tracks, broken fence or it appears as though the horse merely vanished, the insurance company may question coverage under those circumstances.

As with most policies of insurance, in order for the insurance company to pay any claim, the claimant must establish that you, your employees or agents were in some fashion negligent. The commercial general liability policy will cover you for most instances except the damage, death or injury to specific horses owned by other parties. If these horses have substantial value and you were negligent in their handling or care, without this policy you personally will be responsible for any judgment or verdict. Therefore I always urge my clients to review their commercial general liability policy because I am almost certain that care, custody and control coverage will be excluded. The only way to cover yourself with regard to specific injuries to specific horses is to obtain care, custody and control insurance.

About the Expert

Robert A. Hoffa is an Attorney with an office in Williamsport, Pennsylvania. His clients have included equine associations, trainers and breeders throughout the United States. Mr. Hoffa was general counsel to the NRHA from 1988 to 1999. In addition, he has been a Guest Lecturer at Salem Teikyo University for their Equine Law Classes, as well as a Guest Speaker at the University of Kentucky Equine Law Seminar, Equine Affaire, and the Horse World Expo.

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