

2011

Lisa Penunuri and Barry Siegwart v. Sundance Partners, Ltd; Sundance Holdings, LLC; Sundance Development Corp; Robert Redford; Redford 1970 Trust; Rock Mountain Outfitters, L.C.; and Does I-X : Brief of Appellant

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca3](https://digitalcommons.law.byu.edu/byu_ca3)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

H. Burt Ringwood; A. Joseph Sano; Strong & Hanni; Attorneys for Appellees.

Robert D. Strieper; Strieper Law Firm; Attorneys for Appellants.

---

#### Recommended Citation

Brief of Appellant, *Penunuri v. Sundance Partners*, No. 20110565 (Utah Court of Appeals, 2011).  
[https://digitalcommons.law.byu.edu/byu\\_ca3/2925](https://digitalcommons.law.byu.edu/byu_ca3/2925)

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at [http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

---

**IN THE SUPREME COURT OF THE STATE OF UTAH**

---

LISA PENUNURI and BARRY  
SIEGWART,

Plaintiffs/Appellants,

vs.

SUNDANCE PARTNERS, LTD;  
SUNDANCE HOLDINGS, LLC;  
SUNDANCE DEVELOPMENT CORP;  
ROBERT REDFORD; REDFORD  
1970 TRUST; ROCK MOUNTAIN  
OUTFITTERS, L.C.; and Does I-X.

Defendants and Appellees.

**APPELLANTS' BRIEF**

Case No. 20110565

(Trial Case No: 080400019  
Utah Court of Appeals No.  
20100331-CA, Case  
citation 2011 UT App.  
183).

---

**BRIEF OF THE APPELLANT**

---

**ON CERTIORARI FROM THE UTAH COURT OF APPEALS**  
**The Honorable James Z. Davis, Presiding**

---

H. BURT RINGWOOD  
A. JOSEPH SANO  
*STRONG & HANNI*  
3triad Center, Suite 500  
Salt Lake City, UT 84180  
Telephone: (801) 531-7080  
Facsimile: (801) 531-9747  
*Attorneys for Appellees*

ROBERT D. STRIEPER (10145)  
*STRIEPER LAW FIRM*  
2366 Logan Way  
Salt Lake City, UT 84108  
Telephone: (801) 631-6421  
Facsimile: (801) 416-3616  
*Attorneys for Appellants*

---

***Oral Argument and Published Decision Requested***

FILED  
UTAH APPELLATE COURTS

JAN 17 2012

---

**IN THE SUPREME COURT OF THE STATE OF UTAH**

---

LISA PENUNURI and BARRY  
SIEGWART,

Plaintiffs/Appellants,

vs.

SUNDANCE PARTNERS, LTD;  
SUNDANCE HOLDINGS, LLC;  
SUNDANCE DEVELOPMENT CORP;  
ROBERT REDFORD; REDFORD  
1970 TRUST; ROCK MOUNTAIN  
OUTFITTERS, L.C.; and Does I-X.

Defendants and Appellees.

**APPELLANTS' BRIEF**

Case No. 20110565

(Trial Case No: 080400019  
Utah Court of Appeals No.  
20100331-CA, Case  
citation 2011 UT App.  
183).

---

**BRIEF OF THE APPELLANT**

---

**ON CERTIORARI FROM THE UTAH COURT OF APPEALS**

**The Honorable James Z. Davis, Presiding**

---

H. BURT RINGWOOD  
A. JOSEPH SANO  
*STRONG & HANNI*  
3triad Center, Suite 500  
Salt Lake City, UT 84180  
Telephone: (801) 531-7080  
Facsimile: (801) 531-9747  
*Attorneys for Appellees*

ROBERT D. STRIEPER (10145)  
*STRIEPER LAW FIRM*  
2366 Logan Way  
Salt Lake City, UT 84108  
Telephone: (801) 631-6421  
Facsimile: (801) 416-3616  
*Attorneys for Appellants*

---

***Oral Argument and Published Decision Requested***

## **PARTIES**

- 1) Lisa Penunuri, Plaintiff and Appellant;
- 2) Barry Siegwart, Plaintiff and Appellant;
- 3) Sundance Partners, LTD, Defendant and Appellee;
- 4) Sundance Holdings, LLC, Defendant and Appellee;
- 5) Sundance Development Corp., Defendant and Appellee;
- 6) Robert Redford, Defendant and Appellee;
- 7) Redford 1970 Trust; Defendant and Appellee;
- 8) Rocky Mountain Outfitters, L.C.<sup>1</sup>;
- 9) Does I-X.

---

<sup>1</sup> The release at issue in this case applies equally to all the Appellees in the underlying case; therefore Appellees for the purposes of this Appeal will be collectively referred to as "Sundance."

The Limitations on Liability for Equine and Livestock Activities Act applies to both equine and livestock activities equally, but this case revolves around an equine activity as such Appellants will address it in the context of equine activities.

## TABLE OF CONTENTS

<u>TABLE OF CONTENTS</u> .....	i
<u>TABLE OF AUTHORITIES</u> .....	ii
<u>JURISDICTION</u> .....	1
<u>STATEMENT OF THE ISSUE &amp; STANDARD OF REVIEW</u> .....	1
<u>Issue on Certiorari</u> .....	1
Did the Utah Court of Appeals err in construing the Limitations on Liability for Equine and Livestock Activities Act, Utah Code Ann. § 78B-4-201, et seq., to permit releases of liability for ordinary negligence? .....	1
<u>Standard of Review</u> .....	1
<u>Citation to the Record</u> .....	1
<u>STATUTORY PROVISIONS</u> .....	2
<u>STATEMENT OF THE CASE</u> .....	2
<u>STATEMENT OF RELEVANT FACTS</u> .....	6
<u>SUMMARY OF THE ARGUMENT</u> .....	7
<u>ARGUMENT</u> .....	9
I. <u>The Canons of Statutory Construction and the Legislative Debates Revealed that Utah's Legislature Intended to Prohibit an Equine Activity Sponsor from Waiving Its Negligence in a Pre-injury Release</u> .....	9
1) <u>LEGISLATIVE INTENT</u> .....	11
a) <i>Limitations (Plain language)</i> .....	12
b) <i>Notice (general and specific terms)</i> .....	13
c) <i>Definitions of Inherent risks (Silence)</i> .....	15
d) <i>Skiing Act (Similar Statutes in the same Chapter)</i> .....	17
2) <u>LEGISLATIVE DEBATES</u> .....	20
<u>CONCLUSION</u> .....	25
<u>CERTIFICATE OF COMPLIANCE WITH RULE 24(f)(1) and 27(b)</u> .....	26
<u>MAILING CERTIFICATE</u> .....	26
ADDENDUM A: The Limitation on Liability for Equine and Livestock Activities Act.	
ADDENDUM B: The Inherent Risk of Skiing Act.	
ADDENDUM C: 1992 General Legislative Session.	
ADDENDUM D: 2003 General Legislative Session.	
ADDENDUM E: Lower courts findings.	

## TABLE OF AUTHORITIES

### STATUTES

Utah Code Ann. §78B-4-401(2011) . . . . .	2, 17
Utah Code Ann. §78B-4-402(2011) . . . . .	2, 17
Utah Code Ann. §78B-4-403(2011) . . . . .	2, 17
Utah Code Ann. §78-4-404(2011) . . . . .	2, 17
Utah Code Ann §78B-4-201(2011) . . . . .	1, 2, 7, 8, 16, 17
Utah Code Ann. §78B-4-202(2011) . . . . .	2, 8, 12, 17, 18
Utah Code Ann. §78B-4-203(2011) . . . . .	2, 8, 13, 16, 17
Utah Code Ann. §78A-3-102(2011) . . . . .	2, 17

### CASES

<i>Archuleta v. St Mark's Hospital</i> , 2010 UT 36, 238 P.3d 1044. . . . .	10, 11, 17
<i>Field v. Boyer Company, L.C.</i> 952 P.2d 1078, 1079, (Utah 1998). . . . .	1
<i>Heathman v. Giles</i> , 13 Utah 2d 368, 369-70, 374 P.2d 839, 840 (1962). . . . .	14
<i>Kocherhans v. Orem City</i> , 2011 UT App. 399, ¶ 14, ____ P.3d ____ . . . . .	15
<i>Neil v. Utah Wholesale Grocery Co.</i> 210 P. 201, 61 Utah 22 (Utah 1922) . . . . .	10
<i>Nephi City v. Hansen</i> , 779 P.2d 673, (Utah, 1989) . . . . .	14
<i>Penunuri v. Sundance Partners, Ltd.</i> , 2011 UT App 183, . . . . .	1, 2, 5, 7, 9
<i>Rothstein v. Snowbird Corp.</i> 2007 UT 96, 175 P.3d 560. . . . .	12, 17, 18
<i>T-Mobile USA, Inc. v. Utah State Tax Com'n</i> , 2011 UT 28, 254 P.3d 752. . . . .	11

## RULES

Utah. R. App. P. 5(a) .....	5
Utah R. App. P. Rule 51 .....	1
Utah R. Civ. P 54(b) .....	5

## HOUSE OF REPRESENTATIVES FLOOR DEBATES

House of Representatives' Floor Debate, <i>Equine Liability Limitations Act</i> , Hearings on HB0362, Day 40,(February 21, 1992) .....	20, 21
---	--------

## SENATE FLOOR DEBATES

Senate Floor Debate, <i>Inherent Risks of Livestock Activities Act</i> , Hearings on SB0123, Day 23, (February 11, 2003) .....	20, 22
Senate Floor Debate, <i>Inherent Risks of Livestock Activities Act</i> , Hearings on SB0123, Day 25, (February 13, 2003). ....	20, 22

## **JURISDICTION**

The Supreme Court of Utah has jurisdiction over this matter pursuant to Utah Code Ann. §78A-3-102(2011) and Utah R. App. P. Rule 51. This appeal is from the June 9, 2011 Utah Court of Appeals' Opinion in *Penunuri v. Sundance Partners, Ltd.*, 2011 UT App 18, 257 P.3d 1049. Ms. Penunuri petitioned the Supreme Court of Utah for certiorari and on October 20, 2011 the Supreme Court of Utah graciously granted certiorari.

## **STATEMENT OF THE ISSUE & STANDARD OF REVIEW**

### **Issue on Certiorari**

Did the Utah Court of Appeals err in construing the Limitations on Liability for Equine and Livestock Activities Act, Utah Code Ann. § 78B-4-201, et seq., to permit releases of liability for ordinary negligence?

### **Standard of Review**

Matters of statutory construction are purely legal conclusions, which the Supreme Court reviews for correctness. *Field v. Boyer Company, L.C.* 952 P.2d 1078, 1079, (Utah 1998).

### **Citation to the Record**

This issue was preserved for appeal at R. 137-140, and R. 223-226, during Oral Argument at R. 276 pp. 7-14, 30 and Bench Ruling at R. 277 pp. 6, 11. The issue of statutory construction was presented to the Utah Court of Appeals in Ms. Penunuri's



Opening Brief from pp. 13-31 and in Ms. Penunuri's Reply Brief from pp 1-4 and 8-18 and during the entire oral argument.

### **STATUTORY PROVISIONS**

ADDENDUM A: Utah Code Ann §§ 78B-4-201 to 78B-4-203 (formerly Utah Code Ann. §§78-27B-101 to 78-27B-103). Limitations on Liability for Equine and Livestock Activities, Act;

ADDENDUM B: Utah Code Ann. §§ 78B-4-401 to 78B-4-404 (formerly Utah Code Ann. §§78-27-51 to 78-27-54). Inherent Risks of Skiing:

ADDENDUM C: 1992 General Legislative Session, State of Utah, House Bill 362, Day 40, Inherent Risk of Livestock Activities, Sponsor Representative Adams;

ADDENDUM D: 2003 General Legislative Session, State of Utah, Senate Bill 123, Days 23, 25 and 39; Substitute Senate Bill, Inherent Risk of Equine Activities, Sponsor Senator Beverly Evans;

ADDENDUM E: Trial Court Order;

ADDENDUM F: *Penunuri v. Sundance Partners, Ltd.* 2011 UT App. 183, 257 P.3d 1049.

### **STATEMENT OF THE CASE**

**NATURE OF THE CASE:** On August 1, 2007, Arizona resident Lisa Penunuri and her two friends from Florida arranged with Sundance Resort to go on a guided horse ride at Sundance Stables. Sundance arranged Ms. Penunuri's ride with a total of five riders and one guide. The riders consisted of Lisa Penunuri, her two friends from Florida, a mother from Park City and her eight-year-old daughter.

Ms. Penunuri, unlike her friends, was a novice rider and had not been on any previous mountainous trail rides. Lisa's friends on the other hand were horse owners and

passionate horsewomen. The others, the mother and her eight-year-old daughter, like Lisa were very inexperienced beginning riders. The child had never been on a trail ride before. On the day Ms. Penunuri sustained her injuries the child was celebrating her eighth birthday. Prior to this day, the child was not even eligible to go on a trail ride since eight was the minimum age that Sundance allowed.

The beginning order of the riders were: the guide; the eight-year-old child ("child"); the child's mother ("mom"); Ms. Penunuri; and then Ms. Penunuri's two friends ("friends"). The child had problems from the very beginning and at one point the ride had to stop so the guide could untangle the child's reins. The order changed when the ride began again now with the guide, the friends, the mom, the child, and Ms. Penunuri in the rear. The child continued to have problems controlling her horse, and the horse took advantage of this to graze. As a result, gaps immediately began to form in the train of horses. This continued for some time, causing concern with the friends. The friends began to request that the guide slow down or stop and close the gaps.

The guide informed the friends that she would continue an additional hundred yards up the trail and "pony up" (hold the reins of) the child's horse. The guide then rounded a bend in the trail and proceeded up the trail an additional hundred plus yards.

When Ms. Penunuri's horse rounded the bend it suddenly (and unexpectedly to Ms. Penunuri) accelerated to catch up with the heard. The unexpected acceleration caused Ms. Penunuri to fall to the ground. Ms. Penunuri fell on her head, which resulted in fractured neck, specifically a C5-C7 subluxation fracture of her neck with resulting spinal cord syndrome.

Although the acceleration was unexpected to the inexperienced Ms. Penunuri, it is well known in the horse industry that horses separated from the herd will eventually bolt to catch up. It is also known within the industry that this behavior is very dangerous to any riders, but especially dangerous to a novice rider such as Ms. Penunuri.

Sundance's own safety instructional manual provided to the guides at the beginning of each horseback riding season addresses this issue and stresses the dangers associated with gaps in the train of horses. It specifically warns that gaps will cause a horse to unexpectedly accelerate and that the guides are required to prevent gaps from forming. Sundance was negligent when its guide allowed the gaps to form and was further negligent when its guide did not correct the problem when she was specifically alerted to the gaps.

Prior to the ride, all the participants were required to sign the "Sundance Horseback Riding Release." The release purports to release Sundance for its own negligence.

**DISPOSITION AT TRIAL COURT:** On January 19, 2010 the trial court heard oral arguments and on January 29, 2010 the trial court ruled from the bench in favor of the defendants finding the pre-injury release was valid. The court rationalized Sundance was free to waive its own negligence since the legislature did not provide the restrictive language in the form of a public policy statement in the Limitations on Liability for Equine and Livestock Activities act. On March 31, 2010 defendants prepared and the court signed the Finding of Facts, Conclusion of Law, and Order Denying Plaintiffs' Motion for Partial Summary Judgment and Dismissing Plaintiffs'

Ordinary Negligence-Based Claims. The trial court March 31, 2010 order was certified as final pursuant to Utah R. Civ. P. Rule 54(b).

**DISPOSITION AT THE UTAH COURT OF APPEALS:** On April 9, 2010 Ms. Penunuri filed her Notice of Appeal. The Appellate Court determined the 54(b) certification was improper and ordered the parties to file memorandum explaining why summary disposition should not be granted. On August 4th 2010, this Utah Court of Appeals, pursuant to Utah R. of App. P. Rule 5(a) elected to exercise its discretion to treat a timely appeal from an order improperly certified as final under rule 54(b) as a petition to appeal an interlocutory appeal. The Appeal was fully briefed and on April 18, 2011 the issues were Submitted on Oral Argument. On June 9, 2011 the Utah Court of Appeals ruled:

[t]he plain language of the Equine Act provides statutory protection to equine sponsor from inherent risks of equine activities. The portion of the Equine Act excluding negligence, gross negligence, and intentional acts from its protection does not invalidate pre-injury releases of ordinary negligence. In addition, while the Equine Act and the Skiing Act share a number of similarities, only the latter features a declaration of public policy. Accordingly, while the supreme court (sic) in *Rothstein* had a basis in the Skiing Act to invalidate pre-injury release, we see no equivalent basis in the Equine Act for doing the same.

*Penunuri v. Sundance Partners, Ltd.* 2011 UT App. 183, ¶ 20

On July 5, 2011 Ms. Penunuri filed her Writ of Certiorari. On October 20, 2011 the Supreme Court of Utah granted Ms. Penunuri Writ and this appeal ensued.

### STATEMENT OF RELEVANT FACTS

1. On August 1, 2007 forty-eight-year-old Lisa Penunuri and two friends engaged Sundance for a guided horse ride. (Record on Appeal (*hereinafter* "R.") at 142).

2. All the riders were required to sign "Sundance Horseback Riding Release" (*hereinafter* "release"). (R. at 190).

3. The release purports to release Sundance from its own negligence, inherent risks, equipment failure, and any man made obstacles. (R. at 190).

4. The riders consisted of inexperienced and experienced riders, in particular: Ms. Penunuri, the eight-year-old child, and her mother were inexperienced novice riders; and Ms. Penunuri's two friends from Florida were horse owners and very experienced horsewomen, and the professional guide. (R. at 141)

5. During the ride, the guide permitted the least experienced riders to be in the back of the group of riders with an eight-year-old girl second to last. (R at 141).

6. The eight-year-old girl was unable to control her horse from grazing and as a result large gaps began to appear in the train of horses. (R. at 11).

7. The experienced horsewomen started noticing the gaps and asking the guide to slow down or stop. (R. at 11).

8. The guide informed the horsewomen that she would continue another hundred yards up the trail and then "pony up the child." (R. at 11).

9. The gaps created a dangerous environment that resulted in Ms. Penunuri horse to suddenly and unexpectedly accelerate causing Ms. Penunuri to fall off. (R. at 141)

10. As a result of the fall off the horse Ms. Penunuri fractured her neck and sustained spinal cord injuries. (R. at 141)

11. It is well known in the industry and within Rocky Mountain's Outfitters guide's training manual that gaps are a hazard that cause a horse to act in a *predictable* and yet dangerous manner by suddenly accelerating to catch up to the herd. (R. at 203).

12. The trial court determined that in order for the legislature to limit a recreational activity sponsor from waiving its own negligence, the act passed by the legislature must put the limitation in the form of a public policy, and Sundance was therefore free to waive its own negligence since the Limitations on Liability for Equine and Livestock Activities Act U.C.A. §78B-4-201 et seq. lacked a public policy statement. (R. at 277 p.6 lines 2-17).

13. The Utah Court of Appeals affirmed the trial courts findings and ruled that the Limitations on Liability for Equine and Livestock Activities Act, Utah Code Ann. § 78B-4-201, et seq. did not restrict a sponsor from limiting his liability in a pre-injury release. (*Penunuri*, 2011 UT App 183, at ¶20).

### **SUMMARY OF THE ARGUMENT**

The canons of statutory construction reveal that the Limitations on Liability for Equine and Livestock Activities, Act prohibits the use of pre-injury releases to release a sponsor of an equine activity from its negligence. The act's three sections read in harmony with each other and with other related acts in the same section reveal that the legislature intended the equine sponsor would be immune from liability for inherent risks, while requiring the sponsor to remain liable for its negligence. The legislative history

provides additional support that the Equine Act is a bargain between the equine sponsor, the insurance industry, and the participant.

The *Equine and Livestock activity liability limitations* section, 78B-4-202, plain language states, "an equine activity sponsor . . . is not liable for an injury to or death of a participant due to inherent risks associate with these activities, unless the sponsor or professional . . . commits an act or omission that constitutes negligence . . ." Permitting a sponsor to waive these restrictions in a pre-injury release would make everything after "unless" in this section superfluous.

The *Signs to be posted listing inherent risks and liability limitations* section 78B-4-203(1) requires that a sponsor provide notice to participants of inherent risks of equine activities. Section 203(2) requires that notice to be in the form of a sign, document or a release to be signed. Section 203(3) requires that the notice include the inherent risks in the definition section, 201. The canons of construction, *noscitur a sociis* and *ejusdem generis*, provides that a general term which follows a specific term is restrained to the definitions of the specific term. Here the specific term is notice, and notice is limited to inherent risks, therefore, the release is also limited to releasing inherent risks.

The definition of Inherent risks found in section 201(5) includes dangers that are an integral part of equine and livestock activities and does not encompass any negligence on the part of the sponsor. Pursuant to the maxim *expressio unius est exclusio alterius* the natural association of ideas would not permit the sponsor from including its negligence as a inherent risks and therefore it would not be permitted to include its negligence within the release for a participant to sign.

The whole statute interpretation is further supported by a review of the Skiing Act. This Supreme Court of Utah determined the Skiing Act prohibited a ski operator from limiting his liability in a pre-injury release. The Skiing Act and the Equine Act are identical in content and nearly identical in verbiage. The difference being that the equine act states directly that a sponsor is to be liable for his negligence, while the skiing act does not contain this language as it did contain a public policy statement that this Court interpreted to say that an operator could not waive its negligence. See *Rothstein v. Snowbird Co.* 2007 UT 96, ¶10, 175 P.3d 560.

The legislative debates in 1992 and 2003 revealed that the insurance industry was involved in enacting the legislation to limit a sponsor from having liability for inherent risks in order to provide insurance at cheaper rates for those risks that are non-inherent.

## **ARGUMENT**

### **I. The Canons of Statutory Construction and the Legislative Debates Revealed that Utah's Legislature Intended to Prohibit an Equine Activity Sponsor from Waiving Its Negligence in a Pre-injury Release.**

The canons of statutory construction demonstrate that the legislature intended that the Limitations on Liability for Equine and Livestock Activities Act (hereinafter "Equine Act") would prohibit an Equine sponsor from limiting his liability for negligence in a pre-injury release. In particular, the Equine Act reflects an effort of the legislature to protect sponsors of equine recreational activities for liability against injuries resulting from inherent risks of the activity or the facility, while at the same time ensuring that sponsors manage the facility or operation in a reasonable manner requiring sponsors to act non-negligently.



Whether a contract made in contravention of a statute is void depends upon the intent of the Legislature, to be determined not only from the terms and provisions of the statute itself, but from the purpose and objective sought to be accomplished by its enactment. *Neil v. Utah Wholesale Grocery Co.* 210 P. 201, 202, 61 Utah 22 (Utah 1922)

When faced with questions of statutory interpretation the courts' primary goal is to evince the true intent and purpose of the legislature. *Archuleta v. St Mark's Hospital*, 2010 UT 36, ¶8, 238 P.3d 1044 (Internal cites omitted) (finding the peer and care review statutes clear language did not bar claims of patients based upon negligent credentialing). The courts must do so by looking at the best evidence of legislative intent, namely the plain language of the statute itself. *Id.* As part of this well-worn canon of statutory construction courts must read the plain language as a whole. *Id.* Under this whole statute interpretation the courts must construe provisions in harmony with other provisions in the same statute and with statutes under the same and related chapters. *Id.* The courts do so because a statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. *Id.* Consequently, each part of a section should be construed in connection with every other part or section so as to produce a harmonious whole. *Id.*

To determine the legislative intent of a statute and the plain language of its text, courts have developed canons of statutory construction. Canons of construction are basically context-dependent rules of thumb. That is to say, canons are general principles many of them of the common-sense variety for drawing inferences about the meaning of language. Since language derives much of its meaning from context, canons should not

be treated as rules of law but rather as axioms of experience that do not preclude consideration of persuasive contrary evidence if it exists.

To reach the 1) legislative intent, and the cardinal rule that the statute should be read as a harmonious whole, the Supreme Court of Utah should look to: a) the plain language of the statute b) the general, specific and associated words, c) statutory silence, and d) the same paraphrasing in similar or related statutes.

If this Supreme Court finds the plain language is unambiguous, this Court does not need to look to other interpretive tools. *Id.* But “if [this Court determines] the language is ambiguous, [this] Court may look beyond the statute to 2) the **legislative history** ... to ascertain the statute's intent.” *T-Mobile USA, Inc. v. Utah State Tax Com’n*, 2011 UT 28, ¶21, 254 P.3d 752. The Supreme Court of Utah determined “[w]hen viewing the act as a whole does not eliminate duplicative yet plausible meanings, the statute is ambiguous, and we [the Supreme Court of Utah] may resort to extrinsic interpretive tools to resolve the ambiguity.” *Id.* These extrinsic tools are used to “discover the underlying intent of the legislature.” *Id.* This discovery is “guided by the meaning and purpose of the statute as a whole and the legislative history,” *Id.*, “and relevant policy considerations.” *Id.* (internal quotation marks and citations omitted).

## 1) LEGISLATIVE INTENT

Each of the three sections of the Equine Act read in harmony demonstrate the legislature intended that an equine activity sponsor be held liable for its own negligence. See *Archuleta* 2010 UT 36 ¶ 8. The Supreme Court of Utah determined that “in most instances, [the courts] proper role when confronted with a statute should be restricted to

interpreting its meaning and application as revealed through its text. *Rothstein v. Snowbird Co.* 2007 UT 96, ¶10, 175 P.3d 560.

**a) *Limitations (Plain language)***

The *Equine and livestock activity liability limitations* section's 78B-4-202 (hereinafter "Liability Limitation's Section 202") plain language provides that the sponsor is not to be held liable for inherent risks associated with equine activity yet must be held liable for its acts or omissions of negligence. Specifically, the Liability Limitation's Section provides:

"(2) An equine activity sponsor, equine professional, livestock activity sponsor, or livestock professional is not liable for an injury to or the death of a participant due to the *inherent risks* associated with these activities, *unless* the sponsor or professional:

(a)(i) provides the equipment or tack;

(ii) the equipment or tack caused the injury; and

(iii) the equipment failure was due to the sponsor's or professional's negligence.

(b) failed to make reasonable efforts to determine whether the equine or livestock could behave in a manner consistent with the activity with the participant;

(c) owns, leases, rents, or is in the legal possession and control of land or facilities upon which the participant sustained injuries because of a dangerous condition which was known to or should have been known to the sponsor or professional and for which warning signs have not been conspicuously posted;

d(i) **commits an act or omission that constitutes negligence**, gross negligence, or willful or wanton disregard for the safety of the participant; and

(ii) **that act or omission causes the injury**; or

(e) intentionally injures or causes the injury to the participant.

U.C.A §78B-4-202(2)

To allow Sundance to waive these restrictions on the inherent risks in a pre-injury release would make everything after "unless" in this Liability Limitations Section 202 superfluous. A sponsor could negligently: use equipment that was worn out; use horses that are too spirited to be on a trail; fail to remove fallen trees over the trail; fail to warn of upcoming cliffs that the trail skirts; or allow large gaps between the riders, creating the known hazard that the horses will eventually accelerate to catch up to the heard.

**b) Notice (general and specific terms).**

The plain language of the *Signs to be posted listing inherent risks and liability limitations* section 78B-4-203 (hereinafter "Notice Section 203" or "Section 203") requires an equine activity sponsor to provide notice to the participant, warning the participants that horse back riding has certain inherent risks.

The requirements of the Notice Section 203 provides:

Signs to be posted listing inherent risks and liability limitations

(1) An equine or livestock activity sponsor **shall provide notice** to participants of the equine or livestock activity that there **are inherent risks** of participation and that the sponsor is not liable for certain of those risks.

(2) **Notice shall be provided by:**

(a) posting a sign in a prominent location within the area being used for the activity; or

(b) providing a document or **release** for the participant, or the participant's legal guardian if the participant is a minor, to sign.

(3) **The notice** provided by the sign or document shall be sufficient if it **includes the definition of inherent risks** in Section 78B-4-201 and states that the sponsor is not liable for those inherent risks.

U.C.A §78B-4-203

The common-sense interpretation of the Notice Section 203 is that in order for an operator to take advantage of immunity for the inherent dangers of the Limitations on Liability section 202, the operator must provide notice to or warn the participant of the possibility of inherent risks or dangers.<sup>2</sup> The legislature provided three acceptable methods *of notice* in subsection 203(2), by posting a sign in a prominent location, by providing a document, or by providing a release to sign. Subsection 203(1) in the Notice Section limits notice only to inherent risks. This interpretation is further supported by the canons of *noscitur a sociis* and *ejusdem generis*.

Where general terms follow specific terms, the rules of construction, including *noscitur a sociis* "it is known from its associates," and *ejusdem generis*, "of the same kind," require that the general terms be given a meaning that is restricted to a sense that is analogous to the preceding terms. *Nephi City v. Hansen*, 779 P.2d 673, (Utah, 1989) see also, *Heathman v. Giles*, 13 Utah 2d 368, 369-70, 374 P.2d 839, 840 (1962). In *Heathman* the Court rationalized "that if the broadest meaning of the general expression were intended, [the expression] would have been sufficient by itself without any use of the specific terms." *Id.*

---

<sup>2</sup> This Notice requirement was amended in 2003 by Sen. Vallentine in order for the Equine Act to more closely parallel the Skiing Act, see Legislative History, *infra*.

In the Equine Act's Notice Section 203, the general terms "signs to be posted," "documents provided" or "releases to be signed" follow the specific term "notice." Notice is limited to inherent risks. The canons therefore would limit each of the general terms to being analogous of the specific defined term notice and its restriction to inherent risks. The purpose of providing the three types of notice makes sense given the broad range of activities that the Equine Act<sup>3</sup> is intended to cover. A sign would be appropriate where no tickets are sold, such as at a 4H event, a document in the form of a ticket would be most appropriate for an observer where multiple persons watch an event, such as an observer at a polo event, and a signed release<sup>4</sup> would be most direct and the most appropriate for individuals who are actually participating in an event, such as a trail ride.

**c) *Definitions of Inherent risks (Silence)***

Although silence in statutory construction is not always telling, the interpretive maxim *expressio unius est exclusio alterius*, or the expression of one thing is the exclusion of another, applies when in the natural association of ideas, the contrast between a specific subject matter which is expressed and one which is not mentioned leads to an inference that the latter was not intended to be included within the statute. *Kocherhans v. Orem City*, 2011 UT App. 399, ¶ 14, \_\_\_\_ P.3d \_\_\_\_.

---

<sup>3</sup> Equine Activities is defined as "equine shows, fairs, competitions, performances, racing, sales, parades that involve any breeds of equines and any equine disciplines, including dressage, hunter and jumper, horse shows, grand pix jumping, multiple day events, combined training, rodeos, driving, pulling, cutting, polo, steeple chasing, hunting, endurance trail riding, and western games, . . . . (f) other activities of any type including rides, trips, hunts, or informal or spontaneous activities sponsored by an equine activity sponsor. U.C.A § 78B-4-201(2).

Section 203(1) of the Notice Section limits the "notice provided" to risk that are "inherent risks" of Equine Activities. Section 203(3) recognizes that the legislature cannot list every possible inherent risk in all types of equine or livestock activities. The legislature therefore required that a sponsor provide notice to the participant of the bare minimum of inherent risks of equine activities, but it would permit the sponsor to list additional inherent risks particular to the type of activity the sponsor ran. It would not permit a sponsor from listing additional risks that are not inherent in the activity.

Inherent risks as defined in Section 201 are risks or dangers that are integral to equine or livestock activities that do not encompass any negligence on the part of the sponsor.

Specifically the *Definitions'* section 78B-4-201 (hereinafter "Definitions Section 201"), defines inherent risks as:

(5) "Inherent risks" with regard to equine or livestock activities means those dangers or conditions which *are an integral part* of equine or livestock activities, which may include:

- (a) the propensity of the animal to behave in ways that may result in injury harm or death to persons around them;
- (b) the unpredictability of the animal's reaction to outside stimulation such as sound sudden movement, and unfamiliar objects or persons, or other animals;
- (c) collision with other animals or objects; or
- (d) the potential for the participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to maintain control over the animal or not acting within his or her ability.

The natural association of ideas, would permit a sponsor from waiving such inherent risks as are listed and would include other inherent risks such as collisions with wild animals, tripping on rocks on the trail or being kicked by the horse in front, but it would not include such polar opposites as the negligence of the sponsor. The inference of the definitions' list of inherent risks is that the legislature did not intend to include negligence of the sponsor as an inherent risk of equine activities.

**d) *Skiing Act (Similar Statutes in the same Chapter).***

Under a whole statute interpretation courts must construe provisions in harmony with statutes under the same and related chapters. *Archuleta*, 2010 UT 36, at ¶8. The Skiing Act, which is in the same chapter as the Equine Act and which the Equine Act was intended to parallel, prohibits a ski operator from waiving its negligence in a pre-injury release. *Rothstein* 2007 UT 96, ¶20. The two statutes are parallel in content and similar in language; both limit a participant's from recovering from inherent risks of the sport. See U.C.A §§78B-4-202(2) and 78B-4-403. Both acts define inherent risks as those that are integral to the sport. See U.C.A §§78B-4-201(1) and 78B-4-402(1). Both acts require that the operator or sponsor post a sign listing inherent risks of the sport to benefit from their respective Acts. See U.C.A. §§78B-4-203 and 78B-4-404.

Both acts permit a participant to recover from acts of the sponsor or operator's negligence: the Equine Act states it explicitly in U.C.A §78B-4-202(2)(d)(i)-(ii); while the Skiing Act is presumed to permit it from the language prohibiting the participant from recovering from inherent risks. See *Rothstein*, 2007 UT 96 at ¶16. The Skiing Act



specifically prohibits a participant from recovering for inherent risks the following Public

Policy statement:

The legislature finds that the sport of skiing is practiced by a large number of residents of Utah and attracts a large number of non-residents, significantly contributing to the economy of this state. It further finds that few insurance carriers are willing to provide liability insurance protections to ski area operators and that the premiums charged by those carriers have risen sharply in recent years due to the confusion as to whether a skier assumes the risks inherent in the sport of skiing. **It is the purpose of this act, therefore, to clarify the law in relation to skiing injuries and the risks inherent in that sport, to establish as a matter of public policy, no person engaged in that sport shall recover from a ski operator for injuries resulting from those inherent risks.**

U.C.A. 78B-4-401(2007)

The Equine Act does not provide the prohibition in a public policy statement; rather it is contained in the text of the statute, which states:

**An equine activity sponsor . . . is not liable for an injury to or the death of a participant due to the inherent risks associated with these activities,** *unless the sponsor or professional: . . . (d)(i) commits an act or omission that constitutes negligence. . . and that act or omission causes the injury.*

U.C.A. 78B-4-202(2) (See full text of the Liability Section 202 supra). (The bold highlight in the skiing act and the equine act was added to demonstrate the similar language in the two statutes; the italicized area shows additional language found only within the Equine Act).

In *Rothstein*, the Supreme Court of Utah ruled that the public policy statement above created a bargain between the insurance companies and skiing operators. *Rothstein* 2007 UT 96, ¶16. The *Rothstein* Court found that the legislature delineated risks that are inherent in the sport where liability would not adhere, from those dangers created by the operator's negligence (non-inherent risks) where liability would adhere. *Id.* When

Snowbird extracted a pre-injury release from the participant for its negligent acts, Snowbird breached the bargain between it and the participant. *Id.*

The Equine Act also delineated the risks between an operator and the participant. U.C.A 78B-4-202. The difference between the two statutes is that the Supreme Court of Utah in *Rothstein* had to derive from the public policy statement a prohibition on a ski operators' ability to waive its own negligence in a pre-injury release. Unlike the Skiing Act, in the Equine Act above the legislature just straight out stated an equine activity sponsor is not liable for inherent risks unless he "commits an act or omission of negligence." U.C.A. §78B-4-202(2).

Therefore, if the Equine Act (with its expression that an equine activity sponsor be held responsible for its own negligence) is to be in harmony with the Skiing Act (with its derived prohibition from the public policy), the Equine Act must be determined to also prohibit an equine activity sponsor from waiving its own negligence in a pre-injury release.

The plain language of the Equine Act, using each of the above canons of statutory construction, demonstrates that the legislature intended to create a bargain between equine sponsors and participants. The bargain was the same in the skiing act, to ensure that the equine sponsor would not be liable for inherent risks associated with equine activities while the participant would be able to recover for injuries caused by the sponsor's negligence.

## 2) LEGISLATIVE DEBATES

The Utah 1992 House of Representatives and 2003 Senate floor debates plainly support the legislative intention that the Equine Act was to provide the exact same bargain to equine activity sponsors as the Skiing Act provided to ski operators. The Supreme Court of Utah in *Rothstein* held:

[b]y expressly designating a ski area operator's ability to acquire insurance at reasonable rates as the sole reason for bringing the Act into being, the Legislature authoritatively put to rest the question of whether ski area operators are at liberty to use preinjury releases to significantly pare back or even eliminate their need to purchase the very liability insurance the Act was designed to make affordable. They are not. The premise underlying legislative action to make insurance accessible to ski area operators is that once the Act made liability insurance affordable, ski areas would buy it to blunt the economic effects brought on by standing accountable for their negligent acts. The bargain struck by the Act is both simple and obvious from its public policy provision: ski area operators would be freed from liability for inherent risks of skiing so that they could continue to shoulder responsibility for noninherent risks by purchasing insurance. By extracting a preinjury release from Mr. Rothstein for liability due to their negligent acts, Snowbird breached this public policy bargain.

*Id* at ¶16

The legislative debates regarding the Equine Act affirmatively "put to rest the question of whether [equine sponsors] are at liberty to use pre-injury releases to significantly pare back or even eliminate their need to purchase the very liability insurance the [Equine] Act was designed to make affordable."

The 1992 House of Representatives and the 2003 Senate Floor Debates unequivocally demonstrate that the Equine Act's purpose, just like in the Skiing Act's public policy statement, was to provide immunity for inherent risks so that the equine activity sponsor could shoulder the costs of insuring itself for non-inherent risks. The

Equine Act was passed as a parallel bill to the Skiing Act. Also important to the 1992 and 2003 debates were that the equine activity sponsors would not be able to escape liability for their own negligence, fearing that a sponsor would act negligently. Specifically, the debates reflected that the intention of the legislature was a bargain between the sponsors and the insurance industry so that the sponsor would not be liable for inherent risks associated with equine activities in order to afford insurance for its negligent acts.

On February 21, 1992, during the General Legislative Session, House Bill HB0362, (then called the Equine Liability Limitation Act), was debated. House of Representatives' Floor Debate, *Equine Liability Limitations Act*, Hearings on HB0362, Day 40, p 1, (February 21, 1992) (See Addendum C) The goal articulated by the bill's sponsor, Rep. David M. Adams, was to provide the same protection that the skiing act provided to inherent risks without shielding a sponsor for its own negligence. *Id* at p. 2 lines 10-19. Specifically Rep. Adams stated:

Rep. Adams:           And it [] does not attempt to remove any liability for negligence, but attending a horse event, whether it be a race, a show, a rodeo, or what ever, it has with it inherent liability, much the same as when you go skiing.

*Id* at p. 2 lines 10-19.

Representative Adams responded to Representative Browns concerns about the purpose of the bill, stating that the insurance industry had input into the bill so that equine sponsors could obtain insurance at affordable rates. Specifically Adams affirmed:

Rep. Adams: [The] language was adopted [] with the hopes and the *input from the insurance industry* that if you do this [the sponsor] *can buy insurance at a little cheaper rate.*

Realizing, on the same basis that I've explained before, when you get around horses, you are [] exposing yourself to some risk, *much the same as when you come down a ski slope.*

When you go [skiing] you've got to know that there's a chance that you can fall down and break your leg.

If you walk behind a horse, there is a chance you're going to get kicked.

And it will limit the liability of the sponsor of that event, because of these inherent risks of attending those kinds of events.

*Id* at pp. 7-8 lines 14-25, 1-2.

Rep Adams in response to Rep. Brown's inquiries stated that the bill was not intended to limit sponsor's exposures for their own negligence. Specifically affirming that:

Rep. Adams: But if [the sponsors] do anything in the way of negligence if [] they bring a wild horse in there knowing that [] I do not think that limits their exposure.

If they provide faulty equipment, it does not limit their exposure.

I think those limitations were put in [the act]. (They were). It's not an attempt to [] insulate these [sponsors] from negligent acts, just an attempt to recognize that a horse is not totally manageable. That a horse is not a pet. That a horse is [] not as loveable as it sometimes appears.

*Id* at pp. 8-9, Lines 20-25, and 1-7.

On February 11, 2003 during the general session, Senator Beverly Evans sponsored Senate Bill SB0123 an *Amended Substitute* to the Equine Liability Act to add

Inherent Risks of Livestock Activities. Senate Floor Debate, *Inherent Risks of Livestock Activities Act*, Hearings on SB0123, Day 23, p.1 Addendum D, (February 11, 2003)

Sen. Hillyard was fearful that the Equine Act would recreate "contributory negligence" and that the bill would make it so a sponsor who was found 99% negligent would not be responsible for the participant who was only 1% negligent. *Id* at p. 5, Lines 1-5. Sen. Valentine was worried that the bill would "encourage [equine sponsors] to be negligent." *Id* at p. 6, Lines 15-17. Sen. Hillyard further feared that the equine sponsors would not purchase insurance if they were immune from suit. *Id* at p. 7 Lines 1-2. *Id*. In addition Sen. Hillyard not only feared that a participant would be injured and unable to recover, but a sponsor would be exposed if the Supreme Court of Utah were to ever strike the bill down. *Id* at 7, lines 2-6. Although, Sen. Hillyard misinterpreted the statute as recreating contributory negligence, his fears of a participant getting injured by the sponsor's negligence and being unable to recover, would be realized if the act permitted a sponsor to waive his liability for his negligence in a pre-injury release.

On the second day of hearing the bill, Senator Valentine sponsored an additional amendment that required the equine activity sponsor to post signs for inherent risks. See Senate Floor Debate, *Inherent Risks of Livestock Activities Act*, Hearings on SB0123, Day 25, p. 2-3, Lines 19-25, 1-8. (February 13, 2003). Senator Valentine's and Senator Evan's purpose for this amendment was to ensure that the Equine Act would "parallel" the Skiing Act. *Id*. Defending his amendment Sen. Valentine explained;

Sen. Valentine:       After reviewing the bill, I feel that the bill does do what Senator Evans wants [it] to do. I think it's a fair compromise; however, to be running parallel, so that the system does the

same as which she indicated when she had her debate, [but] to run parallel to the same as the ski industry, there need[ed] to be the warning sign[s] given, just as in the ski industry.

So when you have the stockyards set up, and you have the livestock being used, it has to give the same kind of warning of inherent risk. *That's all the amendment does.*

*Id* at pp. 2-3, Lines 19-25, 1-8.

Senator Valentine's comments confirms two things: First, that the Equine Act was intended to parallel the Skiing Act, affording participants of each activity the same rights; and second, that the Notice Section 203 was created to solely provide notice to the participant of inherent dangers.

During the multiple debates between 1992 and 2003, it is apparent that the equine industry along with the insurance industry were striking a bargain so that equine activity sponsors could limit their liability only to non-inherent risks and to obtain insurance for those non-inherent risks. It is also apparent that the senators were concerned that the statute would inadvertently allow an equine activity sponsor the ability to have complete immunity for its negligence and therefore drafted the Act to prevent this from occurring. The legislative debates altogether support Ms. Penunuri's plain language argument that the legislature intended that an equine sponsor cannot avoid its liability for its negligence in a pre-injury release. Therefore when Sundance extracted a mandatory release from Ms. Penunuri, Sundance breached its legislative created bargain between it and Ms. Penunuri.

\* \* \*

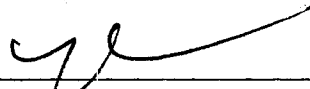
\* \* \*

### CONCLUSION

For the foregoing reasons, Ms. Penunuri and Barry Siegwart, respectfully request that this Supreme Court of Utah find in their favor, overturn Utah Court of Appeals opinion 2011 UT App. and allow them to pursue their negligence claims against Sundance et al.

Respectfully submitted this 17 day of January 2012.

*STRIEPER LAW FIRM*



---

ROBERT D. STRIEPER

*Attorneys for Plaintiffs/Appellants*



**CERTIFICATE OF COMPLIANCE WITH RULE 24(f)(1) and 27(b)**

I hereby certify that:

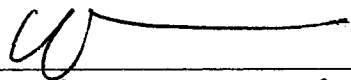
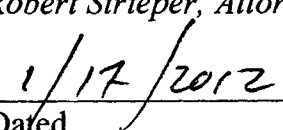
1. This brief complies with the type-volume limitation of Utah R. App. 24(f)(1) because this brief contains 7,074 words, excluding the part of the brief exempt by Utah R. App. P. 24(f)(1)(B);
2. This brief complies with the typeface requirements of Utah R. App. P. 27(b) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2004 for Mac, version 11.6.6 with 13 point Times New Roman;

and,

**MAILING CERTIFICATE**

I hereby certify that on this 17 day of January, 2012, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing Brief of the Appellant, to the following:

A. Joseph Sano  
H. Burt Ringwood  
STRONG & HANNI  
3 Triad Center, #500  
Salt Lake City, UT 84180

  
\_\_\_\_\_  
*Robert Strieper, Attorney for Appellant*  
  
\_\_\_\_\_  
Dated

Tab A

formerly cited as UT ST § 78-27b-101

Vest's Utah Code Annotated Currentness

Title 78B. Judicial Code

▣ Chapter 4. Limitations on Liability

▣ Part 2. Limitations on Liability for Equine and Livestock Activities

→ → § 78B-4-201. Definitions

is used in this part:

) "Equine" means any member of the equidae family.

) "Equine activity" means:

(a) equine shows, fairs, competitions, performances, racing, sales, or parades that involve any breeds of equines and any equine disciplines, including dressage, hunter and jumper horse shows, grand prix jumping, multiple-day events, combined training, rodeos, driving, pulling, cutting, polo, steeple chasing, hunting, endurance trail riding, and western games;

(b) boarding or training equines;

(c) teaching persons equestrian skills;

(d) riding, inspecting, or evaluating an equine owned by another person regardless of whether the owner receives monetary or other valuable consideration;

(e) riding, inspecting, or evaluating an equine by a prospective purchaser; or

(f) other equine activities of any type including rides, trips, hunts, or informal or spontaneous activities sponsored by an equine activity sponsor.

... means an individual, group, governmental entity, club, partnership, or corporation, whether operating for profit or as a nonprofit entity, which sponsors, organizes, or provides facilities for an equine activity, including:

a) pony clubs, hunt clubs, riding clubs, 4-H programs, therapeutic riding programs, and public and private schools and postsecondary educational institutions that sponsor equine activities; and

b) operators, instructors, and promoters of equine facilities, stables, clubhouses, ponyride strings, fairs, and arenas.

“Equine professional” means a person compensated for an equine activity by:

a) instructing a participant;

b) renting to a participant an equine to ride, drive, or be a passenger upon the equine; or

c) renting equine equipment or tack to a participant.

“Inherent risk” with regard to equine or livestock activities means those dangers or conditions which are an integral part of equine or livestock activities, which may include:

a) the propensity of the animal to behave in ways that may result in injury, harm, or death to persons on or around them;

b) the unpredictability of the animal's reaction to outside stimulation such as sounds, sudden movement, and unfamiliar objects, persons, or other animals;

c) collisions with other animals or objects; or

d) the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to maintain control over the animal or not acting within his or her ability.

“Livestock” means all domesticated animals used in the production of food, fiber, or livestock activities.

(a) livestock shows, fairs, competitions, performances, packing events, or parades or rodeos that involve any or all breeds of livestock;

(b) using livestock to pull carts or to carry packs or other items;

(c) using livestock to pull travois-type carriers during rescue or emergency situations;

(d) livestock training or teaching activities or both;

(e) taking livestock on public relations trips or visits to schools or nursing homes;

(f) boarding livestock;

(g) riding, inspecting, or evaluating any livestock belonging to another, whether or not the owner has received some monetary consideration or other thing of value for the use of the livestock or is permitting a prospective purchaser of the livestock to ride, inspect, or evaluate the livestock;

(h) using livestock in wool production;

(i) rides, trips, or other livestock activities of any type however informal or impromptu that are sponsored by a livestock activity sponsor; and

(j) trimming the feet of any livestock.

1 "Livestock activity sponsor" means an individual, group, governmental entity, club, partnership, or corporation, whether operating profit or as a nonprofit entity, which sponsors, organizes, or provides facilities for a livestock activity, including:

a) livestock clubs, 4-H programs, therapeutic riding programs, and public and private schools and postsecondary educational institutions that sponsor livestock activities; and

b) operators, instructors, and promoters of livestock facilities, stables, clubhouses, fairs, and arenas.

“Livestock professional” means a person compensated for a livestock activity by:

a) instructing a participant;

b) renting to a participant any livestock for the purpose of riding, driving, or being a passenger upon the livestock; or

c) renting livestock equipment or tack to a participant.

) “Participant” means any person, whether amateur or professional, who directly engages in an equine activity or livestock activity, ardless of whether a fee has been paid to participate.

)(a) “Person engaged in an equine or livestock activity” means a person who rides, trains, leads, drives, or works with an equine or stock, respectively.

b) Subsection (11)(a) does not include a spectator at an equine or livestock activity or a participant at an equine or livestock activity who does not ride, train, lead, or drive an equine or any livestock.

EDIT(S)

rent through 2011 Third Special Session.

2011 Thomson Reuters

D OF DOCUMENT

© 2012 Thomson Reuters. No Claim to Orig. US Gov. Works.

Vest's Utah Code Annotated Currentness

Title 78B. Judicial Code

Chapter 4. Limitations on Liability

Part 2. Limitations on Liability for Equine and Livestock Activities

→ → § 78B-4-202. Equine and livestock activity liability limitations

- 1) It shall be presumed that participants in equine or livestock activities are aware of and understand that there are inherent risks associated with these activities.
- 2) An equine activity sponsor, equine professional, livestock activity sponsor, or livestock professional is not liable for an injury to or the death of a participant due to the inherent risks associated with these activities, unless the sponsor or professional:
- (a)(i) provided the equipment or tack;
  - (ii) the equipment or tack caused the injury; and
  - (iii) the equipment failure was due to the sponsor's or professional's negligence;
- (b) failed to make reasonable efforts to determine whether the equine or livestock could behave in a manner consistent with the activity with the participant;
- (c) owns, leases, rents, or is in legal possession and control of land or facilities upon which the participant sustained injuries because of a dangerous condition which was known to or should have been known to the sponsor or professional and for which warning signs have not been conspicuously posted;
- (d)(i) commits an act or omission that constitutes negligence, gross negligence, or willful or wanton disregard for the safety of the participant; and

e) intentionally injures or causes the injury to the participant.

This chapter does not prevent or limit the liability of an equine activity sponsor, an equine professional, a livestock activity sponsor, or a livestock professional who is:

a) a veterinarian licensed under Title 58, Chapter 28, Veterinary Practice Act, in an action to recover for damages incurred in the course of providing professional treatment of an equine;

b) liable under Title 4, Chapter 25, Estrays and Trespassing Animals; or

c) liable under Title 78B, Chapter 7, Utah Product Liability Act.

EDIT(S)

rent through 2011 Third Special Session.

2011 Thomson Reuters

D OF DOCUMENT

© 2012 Thomson Reuters. No Claim to Orig. US Gov. Works.



Nestlaw

I.C.A. 1953 § 78B-4-203

formerly cited as UT ST § 78-27b-103

;

Vest's Utah Code Annotated Currentness

Title 78B. Judicial Code

Chapter 4. Limitations on Liability

Part 2. Limitations on Liability for Equine and Livestock Activities

→ → § 78B-4-203. Signs to be posted listing inherent risks and liability limitations

) An equine or livestock activity sponsor shall provide notice to participants of the equine or livestock activity that there are inherent risks of participating and that the sponsor is not liable for certain of those risks.

) Notice shall be provided by:

(a) posting a sign in a prominent location within the area being used for the activity; or

(b) providing a document or release for the participant, or the participant's legal guardian if the participant is a minor, to sign.

) The notice provided by the sign or document shall be sufficient if it includes the definition of inherent risk in Section 78B-4-201 and states that the sponsor is not liable for those inherent risks.

Notwithstanding Subsection (1), signs are not required to be posted for parades and activities that fall within Subsections 78B-4-1(2)(f) and (7)(c), (e), (g), (h), and (j).

:EDIT(S)

urrent through 2011 Third Special Session.

2011 Thomson Reuters

D OF DOCUMENT

Tab B

Vestlaw.

U.C.A. 1953 § 78B-4-401

formerly cited as UT ST § 78-27-51

;

Vest's Utah Code Annotated Currentness

Title 78B. Judicial Code

⌕ Chapter 4. Limitations on Liability

⌕ Part 4. Inherent Risks of Skiing

→ → § 78B-4-401. Public policy

he Legislature finds that the sport of skiing is practiced by a large number of residents of Utah and attracts a large number of nonresidents, significantly contributing to the economy of this state. It further finds that few insurance carriers are willing to provide liability insurance protection to ski area operators and that the premiums charged by those carriers have risen sharply in recent years due to confusion as to whether a skier assumes the risks inherent in the sport of skiing. It is the purpose of this act, [FN1] therefore, to clarify the law in relation to skiing injuries and the risks inherent in that sport, to establish as a matter of law that certain risks are inherent in that sport, and to provide that, as a matter of public policy, no person engaged in that sport shall recover from a ski operator for injuries resulting from those inherent risks.

REDIT(S)

[FN1] Laws 1979, c. 166 enacted former §§ 78-27-51 to 78-27-54.

urrent through 2011 Third Special Session.

) 2011 Thomson Reuters

ND OF DOCUMENT

© 2012 Thomson Reuters. No Claim to Orig. US Gov. Works.

West's Utah Code Annotated Currentness

Title 78B. Judicial Code

Chapter 4. Limitations on Liability

Part 4. Inherent Risks of Skiing

→ → § 78B-4-402. Definitions

used in this part [FNI]:

“Inherent risks of skiing” means those dangers or conditions which are an integral part of the sport of recreational, competitive, or professional skiing, including, but not limited to:

- a) changing weather conditions;
- b) snow or ice conditions as they exist or may change, such as hard pack, powder, packed powder, wind pack, corn, crust, slush, cut-up snow, or machine-made snow;
- c) surface or subsurface conditions such as bare spots, forest growth, rocks, stumps, streambeds, cliffs, trees, and other natural objects;
- d) variations or steepness in terrain, whether natural or as a result of slope design, snowmaking or grooming operations, and other terrain modifications such as terrain parks, and terrain features such as jumps, rails, fun boxes, and all other constructed and natural features such as half pipes, quarter pipes, or freestyle-bump terrain;
- e) impact with lift towers and other structures and their components such as signs, posts, fences or enclosures, hydrants, or water pipes;
- f) collisions with other skiers;

...ing or training for, competitions or special events, and

(h) the failure of a skier to ski within the skier's own ability.

) "Injury" means any personal injury or property damage or loss.

) "Skier" means any person present in a ski area for the purpose of engaging in the sport of skiing, nordic, freestyle, or other types of jumping, using skis, sled, tube, snowboard, or any other device.

) "Ski area" means any area designated by a ski area operator to be used for skiing, nordic, freestyle, or other type of ski jumping, and snowboarding.

) "Ski area operator" means those persons, and their agents, officers, employees or representatives, who operate a ski area.

REDIT(S)

[EN1] Laws 1979, c. 166 enacted former §§ 78-27-51 to 78-27-54.

urrent through 2011 Third Special Session.

) 2011 Thomson Reuters

ID OF DOCUMENT

© 2012 Thomson Reuters. No Claim to Orig. US Gov. Works.

vestlaw.

C.A. 1953 § 78B-4-403

formerly cited as UT ST § 78-27-53

est's Utah Code Annotated Currentness

Title 78B. Judicial Code

▣ Chapter 4. Limitations on Liability

▣ Part 4. Inherent Risks of Skiing

→ → **§ 78B-4-403. Bar against claim or recovery from operator for injury from risks inherent in sport**

Notwithstanding anything in Sections 78B-5-817 through 78B-5-823 to the contrary, no skier may make any claim against, or recover from, any ski area operator for injury resulting from any of the inherent risks of skiing.

REDIT(S)

urrent through 2011 Third Special Session.

) 2011 Thomson Reuters

ID OF DOCUMENT

© 2012 Thomson Reuters. No Claim to Orig. US Gov. Works.

Vestlaw

.C.A. 1953 § 78B-4-404

formerly cited as UT ST § 78-27-54  
;

West's Utah Code Annotated Currentness

Title 78B. Judicial Code

⌕ Chapter 4. Limitations on Liability

⌕ Part 4. Inherent Risks of Skiing

→ → **§ 78B-4-404. Trail boards listing inherent risks and limitations on liability**

Ski area operators shall post trail boards at one or more prominent locations within each ski area which shall include a list of the inherent risks of skiing, and the limitations on liability of ski area operators, as defined in this part.

REDIT(S)

urrent through 2011 Third Special Session.

) 2011 Thomson Reuters

ID OF DOCUMENT

© 2012 Thomson Reuters. No Claim to Orig. US Gov. Works.

Tab C



1992 GENERAL LEGISLATIVE SESSION  
STATE OF UTAH  
\* \* \*

---

HOUSE BILL 362

DAY 40

---

\* \* \*

1 P R O C E E D I N G S

2 SPEAKER: Madam Reading Clerk.

3 READING CLERK: House Bill No. 362. Equine  
4 Liability Limitation Advocacy; Representative Adams.

5 SPEAKER: Representative Adams?

6 REPRESENTATIVE ADAMS: This is a companion  
7 bill to the bill we discussed yesterday, about limiting  
8 liability for participants in an equine event.

9 SPEAKER: Uh-huh.

10 REPRESENTATIVE ADAMS: And it -- it -- it  
11 does not attempt to remove any liability for  
12 negligence, but attending a horse event, whether it be  
13 a race, a show, a rodeo, or whatever, it has with it  
14 inherent liability, much the same as when you go  
15 skiing.

16 And in this, we put in statutes that -- that  
17 does limit the liability of sponsors, whether they be  
18 profit or non-profit corporations, sponsoring those  
19 equine events.

20 We'll yield the question, if there are any?

21 SPEAKER: Representative Lyles?

22 REPRESENTATIVE LYLES: Thank you. Question  
23 of the sponsor.

24 SPEAKER: Will the sponsor yield?

25 REPRESENTATIVE ADAMS: Yes.

1           REPRESENTATIVE LYLES: Representative Adams,  
2 has this had a committee hearing?

3           REPRESENTATIVE ADAMS: This bill did not  
4 have a committee hearing.

5           REPRESENTATIVE LYLES: Does it have a fiscal  
6 note?

7           REPRESENTATIVE ADAMS: This bill -- I'm sure  
8 it does have a fiscal note. And it's -- there's no  
9 fiscal impact to the state.

10          SPEAKER: Representative Stephens.

11          REPRESENTATIVE STEPHENS: Just a couple of  
12 quick questions.

13                 On page three, Representative Adams, where  
14 you're talking about the liability limitations  
15 themselves. This has come up rather quick, and so I  
16 haven't had a chance to read through this, but --

17                 An equine activity sponsor/equine  
18 professional is not liable for an injury to or the  
19 death of participant engaged in the activity unless the  
20 sponsor --

21                 I guess the one I'm concerned about is b(i)  
22 and b(ii). Unless the respon -- so they would be  
23 responsible if they've provided the horse and failed to  
24 make reasonable and prudent efforts to determine  
25 whether the --

1           This is the part that I was reading, and I  
2 was -- wasn't sure what this means exactly.

3           If they provide the horse, then they have  
4 to -- and they fail to make reasonable and prudent  
5 efforts to determine whether the participant could  
6 engage safely in the horse activity -- or equine  
7 activity, what kind of steps is this requiring them to  
8 do to see if the participant --

9           Would this mean like they'd have to be a --  
10 like a licensed rodeo or something? Or -- how --  
11 what -- what steps could they do to make sure that this  
12 person -- how are they going to know if this person can  
13 reasonably engage in those types of activities? And  
14 then under B, the horse, the equine -- doesn't equine  
15 mean horse?

16           REPRESENTATIVE ADAMS: The purpose of the  
17 Act, much like the ski -- is done in the ski industry,  
18 it simply says if you behave -- if you go the -- to  
19 these activities, you have to recognize that there's a  
20 chance you can be hurt; but at the same time, it --  
21 we're not intending to let the sponsors of those  
22 activities -- for example, if you're going to a dude  
23 ranch to ride a horse, this does not limit the  
24 liability of the owner of that dude ranch to pro -- if  
25 he provides you with a wild bucking horse, knowing that

1 you cannot handle it, that does not remove the  
2 liability from that -- that particular person, but --

3 REPRESENTATIVE STEPHENS: Well, I guess --  
4 that -- that's my point. How do they know if a  
5 particular person can handle a wild bucking horse?

6 Say it's a rodeo, and you have a rider  
7 that's going to ride these broncos, and the bronco  
8 throws him and he's injured. They would -- they would  
9 still be liable or they wouldn't be liable?

10 REPRESENTATIVE ADAMS: Well, in the example  
11 you're putting to me, the entrant has to pay a fee, and  
12 he absolutely knows what he's doing, and he's  
13 participating in a -- in the event, acknowledging the  
14 risk. And when he does that, I -- I think it's implied  
15 there. I'm not an attorney, but I think it's implied  
16 there that -- that he knows what's happening and,  
17 therefore, if he does get injured, knowing the type of  
18 activity, he's a member of the Professional Rodeo  
19 Cowboy's Association, I'm just speculating that yes,  
20 this would limit the liability of the rodeo people.

21 REPRESENTATIVE STEPHENS: Look at line 22.

22 Unless the sponsor -- reading -- so the  
23 sentence makes sense, "Unless the sponsor or  
24 professional fail to make reasonable and prudent  
25 efforts to determine whether the equine could behave

1 safely with the participant.

2 REPRESENTATIVE ADAMS: I -- I'm not -- in  
3 this piece of legislation, we're not trying -- there  
4 are a lot of people that rent horses out to dudes on a  
5 one-, or a two-, or a three-hour basis. And on this  
6 legislation, I'm not attempting to limit their  
7 liability if they bring in a -- an unmanageable horse  
8 for an inexperienced rider; but at the same time, if  
9 you go to a rodeo, you expect an unmanageable horse.

10 REPRESENTATIVE STEPHENS: Okay. I see what  
11 you're saying. Okay. Thank you.

12 SPEAKER: Representative Brown.

13 REPRESENTATIVE BROWN: Thank you,  
14 Mr. Speaker.

15 Will the sponsor yield to a question?

16 REPRESENTATIVE ADAMS: Yes.

17 SPEAKER: Will the sponsor yield?

18 Proceed.

19 REPRESENTATIVE BROWN: Tell me how this  
20 could impact the liability at a horse pulling contest?

21 Now I notice, in the definition of equine  
22 activities that it's listed, but under this particular  
23 issue that Representative Stevenson just brought up --  
24 Stephens just brought up, it indicates that -- that  
25 fail to make reasonable and prudent efforts to

1 determine whether the equine could behave safely with  
2 the participant. Now, I don't quite understand that.  
3 A lot of times a person, you know, in -- in those  
4 contests, an animal gets excited.

5 A couple of years ago, out in Draper, for  
6 example, we had a horse get over a fence, go right over  
7 a fence and land in the lap of some people. Is this  
8 exempting us from liability, or increasing our  
9 liability?

10 REPRESENTATIVE ADAMS: I don't know. The  
11 only thing I can tell you is this language was adopted  
12 from the states of Oklahoma, Oregon, Texas, and two or  
13 three other states who have enacted this very  
14 legislation, and it was done with the hopes and the  
15 input of the insurance industry, that if you do this,  
16 you can buy insurance at a little cheaper rate.

17 Realizing, on the same basis that I've  
18 explained before, when you get around horses, you  
19 are -- you are exposing yourself to some risk, much the  
20 same as when you come down a ski slope. When you go in  
21 there, you've got to know that there's a chance that  
22 you can fall down and break your leg.

23 If you walk behind a horse, there's a chance  
24 you're going to get kicked.

25 And it will limit the liability of the

1 sponsor of that event, because of these inherent risks  
2 of attending those kind of events.

3 REPRESENTATIVE BROWN: Would this -- would  
4 this have any impact on the activity we see downtown,  
5 with the carriages, at all? Could this be a benefit  
6 to them in dealing with that liability issue?

7 I think the thing to do -- you're trying to  
8 do is good. I'm surely not speaking against it,  
9 because this has been a big issue. In fact, the  
10 association, the Horse Pulling Association, usually has  
11 their own liability insurance, as do most of the  
12 counties or cities where you go to put on a contest.

13 And I hope this would have the effect you're  
14 talking about, limit the liability so that this  
15 insurance could be purchased cheaper.

16 The activity, the commercial activity, does  
17 it affect that at all, do you know?

18 REPRESENTATIVE ADAMS: I -- I -- I'm sorry,  
19 I can't answer -- I don't know.

20 But -- if they do anything in the way of  
21 negligence, if -- if they bring a wild horse in there  
22 knowing that -- I don't -- I do not think that limits  
23 their exposure.

24 If they provide faulty equipment, it does  
25 not limit their exposure.



1           I -- I think those limitations were put in  
2 there. It's not -- and it's -- it's not an attempt  
3 to -- to insulate these people from negligent acts,  
4 just an attempt to recognize that a horse is not  
5 totally manageable. That a horse is not a pet. That a  
6 horse is -- is -- is not as lovable as it sometimes  
7 appears.

8           REPRESENTATIVE BROWN: And the public should  
9 recognize that.

10          REPRESENTATIVE ADAMS: Yes.

11          REPRESENTATIVE BROWN: Of course I -- I  
12 guess the issue of the equipment is certainly up to  
13 interpretation by a judge.

14           You know, I know of a case -- and of course  
15 I'm talking strictly from the point of the view of the  
16 draft horses now, but I've seen a couple of cases at  
17 pulling matches where these horses get excited, and you  
18 pull them in with a stone rope to hook up, and a snap  
19 on the line has broken.

20           If you've been to one, there's sometimes  
21 three or four people hanging on the lines to hold the  
22 horses.

23           Down at the state fair, for example, last  
24 September, I was assisting a friend of mine with a  
25 team. And he had good lines, but his horses were

1 excited, and they were going into the boat, and with he  
2 and I both dragging on the lines, one of the lines  
3 snapped. And the minute that snapped, that pressure,  
4 of course that changed the direction of the horses, and  
5 we started off through the crowds.

6 Fortunately, we got them shut down.

7 And that was even a bigger risk, recognizing  
8 the kind of conditions at the fair grounds because of  
9 all of the rain, we were pulling in an area where the  
10 crowd was very accessible there.

11 And I -- I guess I just have had those  
12 questions. And I think the intent is very good. I  
13 think it's something we might have to look at and could  
14 amend or change if there's problems, but I certainly  
15 support it.

16 REPRESENTATIVE ADAMS: thank you.

17 SPEAKER: Representative Rise.

18 REPRESENTATIVE RISE: Thank you.

19 Sponsor yield?

20 SPEAKER: Will the sponsor yield?

21 REPRESENTATIVE ADAMS: yes.

22 SPEAKER: Proceed.

23 REPRESENTATIVE RISE: Representative Adams,  
24 I too support what we're trying to do, and trying to  
25 clarify in my mind, what -- what is meant by limited

1 liability?

2 REPRESENTATIVE ADAMS: Come again?

3 REPRESENTATIVE RISE: What is meant by  
4 limited liability? Is there a figure? Or number? Or  
5 does that mean there's no liability? What -- I see no  
6 figures, or --

7 REPRESENTATIVE ADAMS: Well, it -- I

8 REPRESENTATIVE RISE: What's the definition  
9 of that, I guess.

10 REPRESENTATIVE ADAMS: I believe that's  
11 defined on page three, lines 12 through 13, where it  
12 says the "Is not liable for injury or death of a  
13 participant in the event -- unless he is guilty in --  
14 in the -- in those lines listed below that.

15 REPRESENTATIVE RISE: In other words,  
16 limited would be there would be no liability.

17 In other words, there's not a certain point.  
18 In other words, limited, if it -- if it wasn't  
19 intentional, or it wasn't your fault, then virtually  
20 there would be no liability is what you're saying.

21 REPRESENTATIVE ADAMS: That's correct.

22 REPRESENTATIVE RISE: Okay. Thank you.

23 SPEAKER: Representative Tuttle.

24 REPRESENTATIVE TUTTLE: Thank you,  
25 Mr. Speaker.

1           You know, every year out in Magna, we have a  
2        rodeo. And everybody knows when they to go rodeos with  
3        people that are riding in the rodeo, if they get hurt,  
4        they're not going to sue anybody.

5           Sometimes you might worry about somebody in  
6        the stands that gets too close and gets kicked or  
7        something like that, but I think people understand that  
8        when you're around livestock and horses, sometimes they  
9        do kick.

10          I think this is more of a human sense bill  
11        here, that we've got to have some common sense. And I  
12        think this just takes the responsibility off the  
13        sponsors, for somebody being stupid.

14                       (Whereupon, the recording  
15                       was concluded.)

16                       \*   \*   \*

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

Debra A. Dibble; RMR, CRR

Tab D

2003 GENERAL LEGISLATIVE SESSION  
STATE OF UTAH  
\* \* \*

---

**SENATE BILL 123**

**DAY 23**

---

\* \* \*

\* \* \*

1 P R O C E E D I N G S

2 SPEAKER: Now go to First Substitute Senate  
3 Bill 123.

4 READING CLERK: Senate Bill 123, Inherent  
5 Risk of Livestock Activities; Senator Beverly Evans.

6 SPEAKER: Senator Evans.

7 SENATOR EVANS: Thank you, Mr. President.

8 I need to move some amendments that are just  
9 clerical, if I could do that.

10 SPEAKER: Okay.

11 SENATOR EVANS: On line -- or page four,  
12 line 115 reinstate the double i and delete three.

13 And then on page four, line 116, delete E  
14 and insert D.

15 And on page four line 117, delete two and  
16 insert three.

17 If I could hand that to the cercla. It's  
18 just an editing error.

19 SPEAKER: Okay.

20 SENATOR EVANS: Okay? So I need to move  
21 that --

22 SPEAKER: Do you have those, Sandy?

23 Okay, very good.

24 I'll place those amendments. All in favor  
25 of those amendments, say aye.



1 (AYES HEARD.)

2 SPEAKER: Opposed?

3 Motion passes.

4 Now to the bill.

5 SENATOR EVANS: Thank you, Mr. President.

6 Several years ago, when we were talking  
7 about equine events, we wanted to try and limit the  
8 liabilities, and we overlooked including the livestock  
9 activities. And this allows us, so we don't have  
10 extreme liabilities for young people who choose to  
11 participate in livestock shows, or people who choose  
12 to -- to participate in professional livestock  
13 activities, it includes a definition of livestock.

14 So it just puts a limitation so that we can  
15 continue these type of activities without always being  
16 at risk of liability.

17 SPEAKER: Okay.

18 We go to Senator Allen first, then to  
19 Senator Hillyard.

20 SENATOR ALLEN: Thank you, Mr. President.

21 Some of these programs are very active in my  
22 senate district, and I know that we have a lot of  
23 injuries. In fact, in one area we have something  
24 almost weekly.

25 But is this going to limit their access to

1 recover healthcare costs, any of those issues?

2 What kind of caps are going to be on those?

3 SENATOR EVANS: No. It doesn't. It just  
4 goes back -- you know when you go back and have these  
5 extreme losses, it puts a limitation so that you don't  
6 end up with, you know, hundreds and thousands of  
7 dollars. And it puts just a (inaudible) limitation on  
8 those.

9 SENATOR ALLEN: It --

10 SENATOR EVANS: -- recovered healthcare  
11 costs or any injury costs. Or property damage.

12 SENATOR ALLEN: And if I may ask another  
13 question of the sponsor.

14 What is that limit? I didn't find it  
15 quickly looking through that bill.

16 SENATOR EVANS: It's in another section of  
17 the code. We just --

18 SENATOR ALLEN: Is the \$400,000 malpractice  
19 on it?

20 SENATOR EVANS: No.

21 SENATOR ALLEN: That's the question I have.  
22 I'll have to try to find it here. Thank you.

23 SENATOR HILLYARD: I guess my concern with  
24 the bill is -- is there was a recent Utah Supreme Court  
25 case that struck down the releases that many people

1 used for activities. And as I read the bill, it really  
2 appears to me that we're recreating a thing that used  
3 to be called contributory negligence, which, if you are  
4 one percent at fault and the other was 99 percent at  
5 fault, you would recover nothing.

6 We changed that a number of years to  
7 comparative negligence, so that if you're 40 percent at  
8 fault and the other person is 60 percent at fault, and  
9 your damages were say \$10,000, you'd get 60 percent of  
10 it.

11 If it were equal, 50/50, you'd recover  
12 nothing. And it became a more fair system.

13 And I guess I'm concerned, as I read this,  
14 because I don't read an exemption for gross negligence.  
15 For people who may be running a fair and know they've  
16 got a dangerous animal there, and -- and don't really  
17 particularly be worried about it because they have no  
18 liability.

19 And I think what we've done on most of these  
20 is if we have granted some type of limited immunity,  
21 we've made it limited immunity, but also excluded out  
22 of it gross negligence in that regard.

23 And I think, in answer to Senator Allen's  
24 question, there would be no recovery at all.

25 Now, I can understand, if I'm out working in

1 a 4H thing, and dealing with animals all the time, that  
2 I should be expected to know more about that. But if  
3 I'm somebody who just came in from the country, and --  
4 or from the city, and went to ride a horse or go to a  
5 fair or something, and really had never been around  
6 animals my whole life, and something happened and maybe  
7 I am at fault. Maybe I'm 20 percent at fault. But if  
8 people looking at it realistically said, you know, the  
9 people who put this together were probably 80 percent  
10 at fault of this. They had an animal there they knew  
11 was dangerous, and they didn't take proper care of it,  
12 but yet what we've done in this bill is the person  
13 who's 20 percent at fault would get nothing because we  
14 presume that everyone knows how to handle animals and  
15 do animals. And the argument really is is that it  
16 encourages us to be negligent. It encourages us to not  
17 worry about taking care.

18 I would be more comfortable if the bill were  
19 structured more like -- you know, if there's gross  
20 negligence and a different standard, then this type of  
21 a -- of a (inaudible).

22 So I have problems with this bill, and I'll  
23 have to probably vote no, even though I -- you know, I  
24 agree with Senator Allen, I have a lot of people that  
25 would probably like it, but as a practical matter, I

1 hate to pass it, people then think, Ahh, I'm safe. I  
2 don't have to worry about insurance. Being struck down  
3 by the Supreme Court, as some of these statutes we've  
4 done, then suddenly they're exposed with no insurance  
5 coverage at all. And I think that's not fair to the  
6 people either.

7 SPEAKER: Thank you.

8 Senator -- do you want to reply to that,  
9 Senator Evans? Or do you want to just go on with other  
10 question?

11 SENATOR EVANS: Yes, (inaudible). If you'll  
12 read through the definition that we have here in this  
13 bill, we had defined very specifically the type of  
14 activities, and so many of the examples that Senator  
15 Hillyard used would not be applicable to here.

16 It has livestock shows, competition,  
17 performances, pack event, or parades that are involved  
18 pulling carts. Teaching activities. Public relations.  
19 It has a rides, trips, and other livestock  
20 attributing a fee. 4H activities and those types of  
21 things are well defined within there what has the  
22 limitations of liability.

23 SPEAKER: Senator Gladwell?

24 SENATOR GLADWELL: Thank you, Mr. President.  
25 I did have a question of the sponsor, if I might.

1           I just wondered, and I may have missed your  
2 original presentation. Is there a -- is there a  
3 problem currently, or are you anticipating problems?

4           I mean, have there been a rash of lawsuits,  
5 or is there a specific case or cases that point to  
6 concerns? Or is this kind of an anticipatory  
7 legislation?

8           SENATOR EVANS: Thank you, Senator.

9           What we're finding, more and more, because  
10 of the liability environment in which we are  
11 participating in, that many people do not want to allow  
12 any type of use of the livestock or anything because  
13 their so afraid of any type of liability when we have  
14 these livestock shows and different activities, or a  
15 kids even sponsored livestock shows and those type of  
16 things. People are so concerned because of the  
17 liability, even though they own the animal and most of  
18 them recognize they're inherent risks when they deal  
19 with that livestock. So yes, we are starting to have a  
20 lot of challenges and problems.

21           SENATOR GLADWELL: Well, I wondered, is that  
22 a general concern people are expressing? They're  
23 worried or concerned? Or is there -- have there been  
24 lawsuits? I'm just wondering, trying to separate  
25 reality from potential or probability.

1           SENATOR EVANS: Who brought this bill to me  
2 were the people in charge of a livestock show out in my  
3 senate district, and said we're getting to the point  
4 where people don't even want to participate in any of  
5 these type of activities, and we need a clearer  
6 definition that we recognize there are inherent risks,  
7 and we try to have a limited liability.

8           SENATOR GLADWELL: So there's no -- we can't  
9 really point to any actual --

10          SENATOR EVANS: Right.

11          SENATOR GLADWELL: -- recent lawsuit or  
12 anything?

13          SENATOR EVANS: There has not been a recent  
14 lawsuit. It's just the fear factor out there, more  
15 than anything. And it's one we have done for the  
16 lack -- or for the horse industry, the equine, and we  
17 felt like if we included this for livestock it would be  
18 more encompassing.

19          SPEAKER: Senator Valentine?

20          SENATOR VALENTINE: Thank you,  
21 Mr. President.

22                I have some concerns with this bill as well.

23                If I read it correctly, on line 61, if a  
24 person uses an animal that they know is an aggressive  
25 or is not suitable for pulling a cart in a 24th of July

1 parade, and that animal gets away from them, and gets  
2 onto the parade route and injures people, that person  
3 is immune from any liability. There's no cap. There's  
4 no \$400,000 cap like there is in the state law.  
5 There's no cap. It just -- he's immune.

6 If, in fact, that's the case, and I find it  
7 throughout the bill and various different places like  
8 that, that gives me some real cause for concern.

9 In fact, if I could, Mr. President, ask the  
10 sponsor a question.

11 Is that what you intend in this, Senator?

12 SENATOR EVANS: No, it isn't.

13 You know, Mr. President, I think at this  
14 time I'd like to circle the bill, and then I'd be able  
15 to answer a lot of those questions off the floor,  
16 because it's about that time.

17 SPEAKER: Why don't we do that. Yeah.

18 SENATOR VALENTINE: Mr. President, I'd like  
19 to move to circle.

20 SPEAKER: Thank you. All in favor say aye.

21 (AYES HEARD.)

22 SPEAKER: Opposed?

23 The motion passes. I think we're at that --

24 (Whereupon, the recording  
25 was concluded.)

\* \* \*



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

[illegible]

I, Debra A. Dibble, Registered Merit Reporter and Certified Realtime Reporter, for the State of Utah, do hereby certify that the foregoing transcript was taken down by me stenographically from electronically recorded tapes and thereafter transcribed under my direction.

That the foregoing pages contain a true and accurate transcript of the electronically recorded proceedings, or requested portions thereof, and was transcribed by me to the best of my ability from the tapes given me.

Debra A. Dibble; RMR, CRR

2003 GENERAL LEGISLATIVE SESSION  
STATE OF UTAH  
\* \* \*

---

**SENATE BILL 123**

**DAY 25**

---

\* \* \*

\* \* \*

1 P R O C E E D I N G S

2 SPEAKER: Senator Evans?

3 SENATOR EVANS: Mr. President, I'd like to  
4 remove the circle on First Substitute Senate Bill 123.

5 SPEAKER: Motion to remove circle on 123.

6 All in favor say aye.

7 (AYES HEARD.)

8 SPEAKER: Motion passes. The bill is before  
9 us.

10 SENATOR EVANS: Thank you, Mr. President.

11 This was the Inherent Risk of Livestock  
12 Activities that we had a chat -- or we started  
13 discussing yesterday. And I think we're all in a  
14 consensus, and so I'd like to move to Senator Valentine  
15 to make an amendment.

16 SPEAKER: Senator Valentine? Thank you.

17 SENATOR VALENTINE: Thank you,  
18 Mr. President.

19 I'd move the amendment, Amendment No. 2,  
20 under my name, dated February 13th, 2003.

21 Let me explain that amendment.

22 After reviewing the bill, I feel that the  
23 bill does do what Senator Evans wants to do. I think  
24 it's a fair compromise; however, to be running  
25 parallel, so that the system does the same as which she

1 indicated when she had her debate, to run parallel to  
2 the same as the ski industry, there needs to be the  
3 warning sign given, just as there is in the ski  
4 industry.

5 So when you have the stockyards set up, and  
6 you have the livestock being used, it has to give the  
7 same kind of warning of inherent risk. That's all the  
8 amendment does.

9 SPEAKER: -- any questions on the amendment?

10 Seeing none, I'll place the motion.

11 All in favor of the amendment say aye.

12 (AYES HEARD.)

13 Opposed say no.

14 The motion passes.

15 The bill is before us as amended, Senator.

16 SENATOR EVANS: Thank you, Mr. President.

17 Yesterday we had an interesting discussion.

18 People wanted to talk about the limitations of  
19 liability on equine activities, and we've added  
20 livestock activities.

21 We already had this whole section -- or we  
22 had a section that defined this in the Code, but when  
23 we went back it was not really clear to include 4H and  
24 a lot of different other activities so that --

25 We can't always predict animal behavior, and

1 that -- if you, for example, have a youngster who's  
2 trimming a calf to get him ready for the livestock  
3 show, he happens to kick, we can't predict that type of  
4 behavior. So it just limits the liability. But  
5 anything that is gross negligence, the issues of  
6 equipment or everything, none of that is exempt.

7 And there was a question on that yesterday,  
8 and we just want to clarify that. There was not time  
9 to be able to clarify that yesterday.

10 SPEAKER: Thank you. Any question of  
11 Senator Evans?

12 Seeing none, Senator?

13 SENATOR EVANS: I would call for a question  
14 on -- for Substitute Senate Bill 123.

15 SPEAKER: That will be read for the third  
16 time roll call vote.

17 READING CLERK: Senator Allen?

18 (AYE.)

19 READING CLERK: Aaron?

20 (AYE.)

21 READING CLERK: Bale?

22 (AYE.)

23 READING CLERK: Blackham?

24 (AYE.)

25 READING CLERK: Bramble?

1 (AYE.)  
2 READING CLERK: Bethers?  
3 (AYE.)  
4 READING CLERK: Davis?  
5 (AYE.)  
6 READING CLERK: Demitrich?  
7 (AYE.)  
8 READING CLERK: Eastman?  
9 (AYE.)  
10 READING CLERK: Evans?  
11 (AYE.)  
12 READING CLERK: Evans?  
13 (AYE.)  
14 READING CLERK: Grippa?  
15 (AYE.)  
16 READING CLERK: Hatch?  
17 (AYE.)  
18 READING CLERK: Hellewell?  
19 (AYE.)  
20 READING CLERK: Hickman?  
21 (AYE.)  
22 READING CLERK: Hillyard?  
23 (AYE.)  
24 READING CLERK: Jenkins?  
25 (AYE.)

1           READING CLERK:   Julander?  
2           (AYE.)  
3           READING CLERK:   Knutson?  
4           (AYE.)  
5           READING CLERK:   Maine?  
6           (AYE.)  
7           READING CLERK:   Steele?  
8           (AYE.)  
9           READING CLERK:   Stevenson?  
10          (AYE.)  
11          READING CLERK:   Thomas?  
12          (AYE.)  
13          READING CLERK:   Valentine?  
14          (AYE.)  
15          READING CLERK:   Waddoups?  
16          (AYE.)  
17          READING CLERK:   Walker?  
18          (AYE.)  
19          READING CLERK:   Wright?  
20          (AYE.)  
21          READING CLERK:   President Minsale?  
22          (AYE.)  
23          SPEAKER:   First Substitute Senate Bill 123  
24          is received.  24 aye votes,  no nay votes,  and 5 being  
25          absent passes to the third reading calendar.  We

1 have --

2 (Whereupon, the recording  
3 was concluded.)

4 \* \* \*

25



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

I, Debra A. Dibble, Registered Merit Reporter and Certified Realtime Reporter for the State of Utah, do hereby certify that the foregoing transcript was taken down by me stenographically from electronically recorded tapes and thereafter transcribed under my direction.

Debra A. Dibble; RMR, CRR

2003 GENERAL LEGISLATIVE SESSION  
STATE OF UTAH  
\* \* \*

---

**SENATE BILL 123**

**DAY 39**

---

\* \* \*

\* \* \*

P R O C E E D I N G S

SPEAKER: Representative Ure.

REPRESENTATIVE URE: Mr. Speaker, I would move that we move from the House calendar to the Senate calendar.

SPEAKER: The motion is that we move from the House calendar to the Senate calendar.

Discussion of the motion?

Seeing none, all in favor say aye.

(AYES HEARD.)

SPEAKER: Opposed say no?

Motion passes. We're on the Senate calendar.

Representative Ure.

SENATOR EVANS: Mr. Chairman -- or Mr. Speaker, having voted on the prevailing side, I would move that we reconsider our actions on Senate Bill 123, title is Inherent Risk of Livestock Activities, for the purpose of making an amendment.

SPEAKER: Was there --

Representative Ure, there's -- which -- you said 123, but there's a substitute. Wasn't there?

REPRESENTATIVE URE: It's -- it's First Substitute.

SPEAKER: Okay. So you want --

1               REPRESENTATIVE URE:   Yes.

2               SPEAKER:   The motion is we reconsider our  
3 action on First Substitute Senate Bill 123.

4               REPRESENTATIVE URE:   Correct.

5               SPEAKER:   Do you want to speak further to  
6 that?

7               REPRESENTATIVE URE:   After the bill was  
8 passed out yesterday we -- we read the last lines in  
9 the bill to where it can be interpreted many different  
10 ways; and to make it read cleanly, and thoroughly, we  
11 decided we better make those amendments. And that's  
12 why we're bringing the bill back is to place those  
13 minutes in and make it read more clearly.

14              SPEAKER:   Okay. Further discussion to the  
15 motion to reconsider?

16              Seeing none, Representative Ure for  
17 summation.

18              REPRESENTATIVE URE:   I would waive that.

19              SPEAKER:   Motion is we reconsider our action  
20 on having voted on the prevailing side.

21              Representative Ure moves that we reconsider action on  
22 First Substitute Senate Bill 123.

23              Discussion -- those in favor of the motion  
24 say aye.

25              (AYES HEARD.)

1 SPEAKER: Opposed say no.

2 Motion passes.

3 The bill is -- bill will be reconsidered and  
4 is before us. Representative Ure.

5 SENATOR EVANS: Mr. Speaker, I would move  
6 the amendment -- is Amendment No 4, but I only want to  
7 do Amendment 4. Everything above I want to delete, but  
8 only Amendment No. 4, which is -- says page five, lines  
9 123(C) through 123(F).

10 SPEAKER: Okay. The motion is that we amend  
11 this bill via Amendment No. 4, under  
12 Representative Ure's name.

13 There are four items on the amendment, and  
14 he is only proposing the fourth item. He is not  
15 proposing the first three. Is that correct?

16 REPRESENTATIVE URE: Correct.

17 SPEAKER: Do you want to speak to that?

18 REPRESENTATIVE URE: If you want to slip  
19 over on to -- to the first substitute, I'll show you  
20 exactly why I bring this back.

21 On page -- or on line 123(d), it says  
22 Listing the inherent risks -- and we're talking about  
23 signs. We don't want to put a sign out here and then  
24 list 30 different inherited risks, because no one would  
25 ever read it, and it would be all messed up anyway.

1           We just wanted to designate a sign saying,  
2   Warning, we have problems, or whatever it might be, but  
3   not list all of the -- all of the different inherent  
4   risks.

5           And the amendment that I have proposed  
6   straightens that out so it just reads a sign out there.  
7   And that's the justification of bringing it back.

8           SPEAKER: Further discussion?

9           Seeing none, Representative Ure for  
10 summation?

11          SENATOR EVANS: I waive that, please.

12          SPEAKER: Summation is waived.

13          The motion is that we amend -- we place the  
14 amendment in Representative Ure's name. It's Amendment  
15 No. 4, and only item four on the amendment.

16          Those in favor of the motion say aye.

17          (AYES HEARD.)

18          Those opposed say no?

19          Motion passes.

20          Those in favor of Chris Vanocur getting a  
21 tie on, raise your hand.

22          Opposed, say no.

23          All right. Thank you. That passes.

24          Further discussion to the bill as amended?

25          Further discussion to the bill as amended?

1 MR. VANOKER: I have none.

2 SPEAKER: Thank you, Representative Ure, for  
3 summation.

4 REPRESENTATIVE URE: I was glad that Chris  
5 Vanocur was moved anyway.

6 I would waive summation, please.

7 SPEAKER: Summation is waived.

8 Voting is open on First Substitute Senate  
9 Bill 123 as amended.

10 Seeing all present as having voted, voting  
11 will be closed.

12 (Whereupon, the recording  
13 was concluded.)

14 \* \* \*

15

16

17

18

19

20

21

22

23

24

25

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

3  
4

6  
7  
8  
9  
10  
11

12  
13  
14  
15  
16

20



## Tab E

**FILED**

MAR 31 2010

4TH DISTRICT  
STATE OF UTAH  
UTAH COUNTY

H Burt Ringwood, #5787  
A. Joseph Sano, #9925  
STRONG & HANNI  
Attorneys for Defendant  
3 Triad Center, Suite 500  
Salt Lake City, Utah 84180  
Telephone: (801) 532-7080  
Facsimile: (801) 323-2037

*Attorneys for Defendants Sundance Partners, Ltd.,  
Sundance Holding, LLC, Sundance Development Corp.  
Robert Redford, Redford 1970 Trust, and Rocky  
Outfitters*

---

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

---

LISA PENUNURI and BARRY SIEGWART,	)	
	)	
Plaintiffs,	)	<b>FINDINGS OF FACT,</b>
	)	<b>CONCLUSIONS OF LAW, AND</b>
vs.	)	<b>ORDER DENYING PLAINTIFFS'</b>
	)	<b>MOTION FOR PARTIAL</b>
SUNDANCE PARTNERS, LTD.;	)	<b>SUMMARY JUDGMENT AND</b>
SUNDANCE HOLDING, LLC;	)	<b>DISMISSING PLAINTIFFS'</b>
SUNDANCE INSTITUTE, INC.;	)	<b>ORDINARY NEGLIGENCE-BASED</b>
ROBERT REDFORD;	)	<b>CLAIMS</b>
REDFORD 1970 TRUST;	)	
ROCKY MOUNTAIN OUTFITTERS, L.C.;	)	
and DOES 1-X	)	Civil No.: 080400019
	)	
Defendants.	)	Judge Claudia Laycock

---

The above-entitled matter came before the Court as regularly scheduled on January 19, 2010, at 10:30 a.m., before the Honorable Claudia Laycock. Robert Strieper of the Strieper Law Firm appeared on behalf of the Plaintiffs. H. Burt Ringwood of Strong & Hanni Law Firm

appeared on behalf of the Defendants. The Court, having reviewed Plaintiffs' Motion for Partial Summary Judgment and supporting memorandum, Defendants' Memorandum in Opposition to Motion for Partial Summary Judgment, and Plaintiffs' Reply Memorandum in Support of Motion for Partial Summary Judgment, and having considered the arguments of counsel, and being fully advised in the premises, does hereby enter the following:

### **FINDINGS OF FACT**

1. On August 1, 2007, Plaintiff Lisa Penunuri and two friends went to Sundance for a guided horse ride.

2. Prior to the ride, Lisa signed a Release & Indemnity Agreement (hereinafter "Release"), which reads, in relevant part:

#### **RELEASE & INDEMNITY AGREEMENT – READ CAREFULLY BEFORE SIGNING**

**I, the undersigned, and if I am a person under 18 years of age, my parents and I (hereafter "Rider") understand that horseback riding, sleigh riding or horse drawn wagons (collectively "Horseback Riding") involve SIGNIFICANT RISK OF SERIOUS PERSONAL INJURY, PROPERTY DAMAGE OR EVEN DEATH. The risks include NATURAL, MAN-MADE, ENVIRONMENTAL CONDITIONS AND INHERENT RISKS, including changing weather, mud, rocks, variations in steepness, terrain, natural and man-made obstacles, equipment failure and the negligence of others. "Inherent risk" with regard to equine or livestock activities means those dangers or conditions which are an integral part of equine or livestock activities, which may include: (a) the propensity of the animal to behave in ways that may result in injury, harm, or death to persons on or around them; (b) the unpredictability of the animal's reaction to outside stimulation such as sounds, sudden movement, and unfamiliar objects, persons, or other animals; (c) collisions with other animals or objects; or (d) the potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to maintain control over the animal or not acting within his or her ability. Sundance shall have no liability for inherent risks.**

In consideration of participation in the **Horseback Riding** and use of SUNDANCE's facilities, I agree to the following:

**1. I expressly agree to assume all risks of personal injury, falls, accidents, and/or property damage, including those resulting from any negligence of Sundance Partners Ltd., Sundance Holding LLC, Sundance Development Corporation, Sundance Institute, Inc., Robert Redford, Redford 1970 Trust, Rocky Mountain Outfitters, L.C., their agents, employees, property owners, and affiliated companies (herein collectively "SUNDANCE").**

**2. Release & Indemnity.** To the fullest extent allowed by law, I agree to forever release SUNDANCE from any and all claims for injuries, losses, and damages resulting in any way from "Horseback Riding" use of Sundance facilities, SUNDANCE'S negligence. My release includes all claims regarding the design, maintenance, manufacture, instructions, or conditions of the Horseback Riding area, course, structures or equipment utilized in the Horseback Riding, express or implied warranties, product liability and the negligence of SUNDANCE. To the fullest extent allowed by law, I agree to indemnify and hold SUNDANCE harmless from all claims, damages or injuries in any way related to my participation in Horseback Riding or use of any facilities at SUNDANCE, including breach of this Release, and will reimburse SUNDANCE's attorneys' fees and costs, even if SUNDANCE was negligent.

\* \* \*

**7. I HAVE READ, UNDERSTOOD AND VOLUNTARILY SIGNED THIS RELEASE OF LIABILITY.**

*Signature of Rider: /s/ Lisa Penunuri Date 8/1/07*

(Emphasis original.)

3. During the ride, Lisa fell from her horse and sustained personal injuries (hereinafter "the Accident").

4. Lisa Penunuri was 48 years old at the time of the Accident.

5. It is undisputed that Lisa signed the Release prior to the horseback ride.

6. It is also undisputed that Lisa signed the Release voluntarily.

## CONCLUSIONS OF LAW

1. Utah courts have long recognized the general validity of preinjury releases. Russ v. Woodside Homes, Inc., 905 P.2d 901, 904 (Utah Ct. App. 1995) (“[g]enerally, parties . . . may properly bargain against liability from harm caused by their ordinary negligence . . .”)

2. In three recent cases, the Utah Supreme Court has “reaffirmed [Utah’s] position with the majority of states that people may contract away their rights to recover in tort for damages caused by the ordinary negligence of others.” Pearce v. Utah Athletic Foundation, 179 P.3d 760, 765 (Utah 2008); see also, Berry v. Greater Park City Co., 171 P.3d 442 (Utah 2007); Rothstein v. Snowbird Corp., 175 P.3d 560 (Utah 2007).

3. While Utah subscribes to the majority view upholding the validity of preinjury releases, exceptions to that rule exist when the release offends public policy.

4. The Utah Supreme Court’s decision in Rothstein v. Snowbird Corp., 175 P.3d 560 (Utah 2007) and its invalidation of a preinjury release on the grounds of public policy, as reflected in the Inherent Risks of Skiing Act, does not apply in this case.

5. Of great significance to the Rothstein court were the legislative findings and expressions of public policy contained in section 78-27-51.

6. Unlike the Inherent Risks of Skiing Act, the Equine Act contains no statement or section declaring Utah’s public policy. The Equine Act sets forth no legislative findings or expressions of public policy, which was precisely what the Rothstein court found so significant and which formed the basis for its holding.

7. Nothing in the plain language of the Equine Act suggests that an equine activity sponsor may not, by contract, limit their liability for non-inherent risks.

8. This Court declines Plaintiffs' invitation to stray from the plain language of the Equine Act and read into the Equine Act restrictions that exist nowhere in the actual text.

9. The Court finds that the Release signed by Lisa is valid and enforceable as to all of Plaintiffs' ordinary negligence-based claims. Accordingly, the Court finds that all of Plaintiffs' claims, except for the claim of gross negligence, fail as a matter of law.

#### **ORDER**

1. The Court finds that because the Release is valid and enforceable, Plaintiffs' Motion for Partial Summary Judgment is DENIED.

2. Based on the above findings and conclusions, all of Plaintiffs' claims, with the exception of the claim of gross negligence, are dismissed with prejudice and on the merits.

3. Because Plaintiffs' ordinary negligence-based claims do not overlap Plaintiffs' claim for gross negligence, the Court finds there is no just reason for delay and directs entry of final judgment in favor on Defendants in accordance with Rule 54(b) of the Utah Rules of Civil Procedure.

DATED this 30<sup>th</sup> day of March, 2010.

BY THE COURT:

Claudia La  
Honorable Claudia La  
District Court Judge



Approved as to Form:

19  
Robert D. Strieper  
Attorney for Plaintiffs

Tab F



257 P.3d 1049, 684 Utah Adv. Rep. 30, 2011 UT App 183  
(Cite as: 257 P.3d 1049)



Court of Appeals of Utah.  
Lisa PENUNURI and Barry Siegwart, Plaintiffs and  
Appellants,  
v.  
SUNDANCE PARTNERS, LTD.; Sundance Holdings, LLC; Sundance Development Corp.; Robert Redford; Robert Redford 1970 Trust; and Rocky Mountain Outfitters, LC, Defendants and Appellees.

No. 20100331-CA.  
June 9, 2011.

**Background:** Participant in guided horseback ride brought claims against operator for negligence, gross negligence, and vicarious liability for guide's conduct, alleging participant fell from horse when horse unexpectedly accelerated to catch up with group. The Fourth District Court, Provo Department, Claudia Laycock, J., dismissed claims based on ordinary negligence, based on participant's release and indemnity agreement. Participant appealed.

**Holding:** The Court of Appeals, Voros, J., held that the Limitations on Liability for Equine and Livestock Activities Act did not preclude a pre-injury release of liability for ordinary negligence.

Affirmed.

#### West Headnotes

### [1] Appeal and Error 30 ⚡863

30 Appeal and Error  
30XVI Review  
30XVI(A) Scope, Standards, and Extent, in General  
30k862 Extent of Review Dependent on Nature of Decision Appealed from  
30k863 k. In general. Most Cited Cases

### Appeal and Error 30 ⚡934(1)

30 Appeal and Error  
30XVI Review  
30XVI(G) Presumptions  
30k934 Judgment  
30k934(1) k. In general. Most Cited Cases

The appellate court reviews a trial court's legal conclusions and ultimate grant or denial of summary judgment for correctness, and views the facts and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party. Rules Civ.Proc., Rule 56.

### [2] Appeal and Error 30 ⚡842(1)

30 Appeal and Error  
30XVI Review  
30XVI(A) Scope, Standards, and Extent, in General  
30k838 Questions Considered  
30k842 Review Dependent on Whether Questions Are of Law or of Fact  
30k842(1) k. In general. Most Cited Cases

The appellate court reviews questions of statutory interpretation for correctness, giving no deference to the trial court's interpretation.

### [3] Indemnity 208 ⚡30(1)

208 Indemnity  
208II Contractual Indemnity  
208k26 Requisites and Validity of Contracts  
208k30 Indemnitee's Own Negligence or Fault  
208k30(1) k. In general. Most Cited Cases

In general, the common law disfavors agreements that indemnify parties against their own negligence because one might be careless of another's life and limb, if there is no penalty for carelessness.

### [4] Contracts 95 ⚡114

95 Contracts

95I Requisites and Validity

95I(F) Legality of Object and of Consideration

95k114 k. Exemption from liability. Most Cited Cases

Generally, those who are not engaged in public service may properly bargain against liability for harm caused by their ordinary negligence in performance of a contractual duty, but such an exemption is always invalid if it applies to harm wilfully inflicted or caused by gross or wanton negligence.

[5] **Contracts 95** ⚔️114

95 Contracts

95I Requisites and Validity

95I(F) Legality of Object and of Consideration

95k114 k. Exemption from liability. Most Cited Cases

Generally, people may contract away their rights to recover in tort for damages caused by the ordinary negligence of others.

[6] **Statutes 361** ⚔️181(1)

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k180 Intention of Legislature

361k181 In General

361k181(1) k. In general. Most

Cited Cases

**Statutes 361** ⚔️188

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k187 Meaning of Language

361k188 k. In general. Most Cited

Cases

To interpret a statute, the court always looks first to the statute's plain language in an effort to give effect to the legislature's intent, to the degree it

can be so discerned.

[7] **Statutes 361** ⚔️223.2(.5)

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k223 Construction with Reference to Other Statutes

361k223.2 Statutes Relating to the Same Subject Matter in General

361k223.2(.5) k. In general. Most Cited Cases

To determine the meaning of the plain language of a statute, the court examines the statute in harmony with other statutes in the same chapter and related chapters.

[8] **Statutes 361** ⚔️206

361 Statutes

361VI Construction and Operation

361VI(A) General Rules of Construction

361k204 Statute as a Whole, and Intrinsic Aids to Construction

361k206 k. Giving effect to entire statute. Most Cited Cases

Effect must be given, if possible, to every word, clause, and sentence of a statute, and no clause, sentence, or word shall be construed as superfluous, void, or insignificant if the construction can be found which will give force to and preserve all the words of the statute.

[9] **Animals 28** ⚔️66.7

28 Animals

28k66 Injuries to Persons

28k66.7 k. Horses and other equines. Most Cited Cases

**Contracts 95** ⚔️114

95 Contracts

95I Requisites and Validity

95I(F) Legality of Object and of Consideration

95k114 k. Exemption from liability. Most Cited Cases

The Limitations on Liability for Equine and Livestock Activities Act, which states that it protects an equine sponsor from liability arising from the inherent risks of equine activities “unless” the sponsor is negligent, merely defines the limit of the Act's benefits to sponsors, and leaves undisturbed sponsors' common-law right to contractually limit their liability for acts of ordinary negligence. West's U.C.A. § 78B-4-202(2).

**[10] Release 331 ↪1**

331 Release

331I Requisites and Validity

331k1 k. Nature and requisites in general. Most Cited Cases

The main purpose of a release typically is the voluntary relinquishment of a claim or right by one who, absent the release, could have enforced such a claim or right.

**[11] Contracts 95 ↪114**

95 Contracts

95I Requisites and Validity

95I(F) Legality of Object and of Consideration

95k114 k. Exemption from liability. Most Cited Cases

Pre-injury releases must be compatible with public policy.

**[12] Courts 106 ↪87**

106 Courts

106II Establishment, Organization, and Procedure

106II(G) Rules of Decision

106k87 k. Nature of judicial determination. Most Cited Cases

Courts proceed with great caution when considering whether to invoke public policy as a basis for judicial determinations, because public policy is a protean substance that is too often easily shaped

to satisfy the preferences of a judge rather than the will of the people or the intentions of the Legislature; the theory of public policy embodies a doctrine of vague and variable quality, and, unless deducible in the given circumstances from constitutional or statutory provisions, should be accepted as a basis for judicial determinations, if at all, only with the utmost circumspection.

**[13] Contracts 95 ↪108(1)**

95 Contracts

95I Requisites and Validity

95I(F) Legality of Object and of Consideration

95k108 Public Policy in General

95k108(1) k. In general. Most Cited Cases

For a contract to be void on the basis of public policy, there must be a showing free from doubt that the contract is against public policy.

**[14] Contracts 95 ↪114**

95 Contracts

95I Requisites and Validity

95I(F) Legality of Object and of Consideration

95k114 k. Exemption from liability. Most Cited Cases

Generally, public policy does not foreclose the opportunity of parties to bargain for the waiver of tort claims based on ordinary negligence.

**[15] Constitutional Law 92 ↪2488**

92 Constitutional Law

92XX Separation of Powers

92XX(C) Judicial Powers and Functions

92XX(C)2 Encroachment on Legislature

92k2485 Inquiry Into Legislative Judgment

92k2488 k. Policy. Most Cited Cases

To pluck a principle of public policy from the text of a statute and to ground a decision of the

court on that principle is to invite judicial mischief.

**\*1050** Robert D. Strieper, Salt Lake City, for Appellants.

H. Burt Ringwood and A. Joseph Sano, Salt Lake City, for Appellees.

Before Judges DAVIS, VOROS, and CHRISTIANSEN.

### OPINION

VOROS, Judge:

¶ 1 Lisa Penunuri appeals the trial court's order denying her Motion for Partial Summary Judgment against Sundance Partners, LTD, and other named appellees (collectively, Sundance) and dismissing as a matter of law her claims based on ordinary negligence. We affirm.

### BACKGROUND

¶ 2 On August 1, 2007, Penunuri and two friends participated in a guided horseback ride operated by Sundance. The party consisted of five riders and one guide. The riders were arrayed in single file with the guide in front and Penunuri in the rear. The rider directly in front of Penunuri was an eight-year-old girl. The girl had problems controlling her horse; as a result, gaps formed in the train of riders. To keep the train together, the guide informed the riders that she would hold the reins of the eight-year-old's horse. However, before the guide could do so, Penunuri's horse suddenly accelerated to catch up with the other horses. The unexpected acceleration allegedly caused Penunuri to fall off her horse and suffer serious injuries. Sundance's instructional manual for horseback riding guides cautioned that horses that lag behind tend to accelerate quickly to catch up with the group.

¶ 3 Before participating in the ride, Penunuri signed a Release & Indemnity Agreement (the Release), which purported to release Sundance from any claims arising from its ordinary negligence:

I expressly agree to assume all risks of personal injury, falls, accidents, and/or property damage, including those resulting from any negligence of Sundance....

¶ 4 Penunuri filed suit against Sundance alleging negligence, gross negligence, and vicarious liability. She then filed a Motion and Memorandum for Partial Summary Judgment and Declaratory Relief, arguing that the Release is unenforceable under the Limitations on Liability for Equine and Livestock Activities Act (the Equine Act), *see* Utah Code Ann. §§ 78B-4-201 to -203 (2008). The trial court ruled that the Equine Act did **\*1051** not prevent a party from contracting away its liability for ordinary negligence and thus ruled the Release enforceable. It accordingly dismissed all of Penunuri's claims based on ordinary negligence. Penunuri appeals.

### ISSUES AND STANDARDS OF REVIEW

¶ 5 Penunuri contends that the trial court erred by denying her motion for partial summary judgment and by ruling that the Release was enforceable. More specifically, she argues that the plain language of the Equine Act prevents an equine sponsor from limiting its liability for ordinary negligence with a pre-injury release. In addition, she argues that public policy as expressed in the Equine Act prohibits such releases.

[1][2] ¶ 6 Summary judgment is appropriate where "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." Utah R. Civ. P. 56(c). We "review[ ] a trial court's legal conclusions and ultimately grant or denial of summary judgment for correctness and view[ ] the facts and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party." *Bingham v. Roosevelt City Corp.*, 2010 UT 37, ¶ 10, 235 P.3d 730. In addition, "[w]e review questions of statutory interpretation for correctness giving no deference to the trial court's interpretation." *In re S.C.*, 1999 UT App 251, ¶ 8, 987 P.2d 611 (internal quotation marks omitted).

### ANALYSIS

[3][4][5] ¶ 7 “In general, the common law disfavors agreements that indemnify parties against their own negligence because one might be careless of another's life and limb, if there is no penalty for carelessness.” *Hawkins v. Peart*, 2001 UT 94, ¶ 14, 37 P.3d 1062 (internal quotation marks omitted). Nevertheless, generally, “those who are not engaged in public service may properly bargain against liability for harm caused by their ordinary negligence in performance of [a] contractual duty; but such an exemption is always invalid if it applies to harm wilfully inflicted or caused by gross or wanton negligence.” *Id.* ¶ 9 (quoting 6A Arthur Linton Corbin, *Corbin on Contracts*, § 1472, at 596–97 (1962)). Thus, in Utah, as in a majority of states, generally “people may contract away their rights to recover in tort for damages caused by the ordinary negligence of others.” *Pearce v. Utah Athletic Found.*, 2008 UT 13, ¶ 14, 179 P.3d 760; see also *Rothstein v. Snowbird Corp.*, 2007 UT 96, ¶ 6, 175 P.3d 560 (“We have joined the majority of jurisdictions in permitting people to surrender their rights to recover in tort for the negligence of others.”).

¶ 8 Penunuri first contends that the plain language of the Equine Act renders the Release unenforceable. She also contends that the Release offends public policy established by the Equine Act. We consider each contention in turn.

#### A. The Language of the Equine Act Does Not Invalidate the Release.

[6][7][8] ¶ 9 “To interpret a statute, we always look first to the statute's plain language in an effort to give effect to the legislature's intent, to the degree it can be so discerned.” *In re Olympus Constr., LC*, 2009 UT 29, ¶ 10, 215 P.3d 129. To determine the meaning of the plain language, we examine the statute “in harmony with other statutes in the same chapter and related chapters.” *LPI Servs. v. McGee*, 2009 UT 41, ¶ 11, 215 P.3d 135 (internal quotation marks omitted). Moreover, “‘effect must be given, if possible, to every word, clause and sentence of a

statute.... No clause[,] sentence or word shall be construed as superfluous, void or insignificant if the construction can be found which will give force to and preserve all the words of the statute.’ ” *State v. Maestas*, 2002 UT 123, ¶ 53, 63 P.3d 621 (omission and alteration in original) (quoting 2A Norman J. Singer, *Sutherland Statutory Construction* § 46:06 (4th ed. 1984)).

¶ 10 Penunuri contends that the Release violates the express terms of the Equine Act. Section 202 of the Equine Act shields an equine sponsor from liability for the inherent risks associated with equine activities, unless the sponsor engages in negligence, gross negligence, willful or wanton disregard for the safety of the participant, or intentionally injurious conduct:

**\*1052** An equine activity sponsor, equine professional, livestock activity sponsor, or livestock professional is not liable for an injury to or the death of a participant due to the inherent risks associated with these activities, *unless* the sponsor or professional:

(a)(i) provided the equipment or tack;

(ii) the equipment or tack caused the injury; and

(iii) the equipment failure was due to the sponsor's or professional's negligence;

(b) failed to make reasonable efforts to determine whether the equine or livestock could behave in a manner consistent with the activity with the participant;

(c) owns, leases, rents, or is in legal possession and control of land or facilities upon which the participant sustained injuries because of a dangerous condition which was known to or should have been known to the sponsor or professional and for which warning signs have not been conspicuously posted;

(d)(i) commits an act or omission that consti-

tutes negligence, gross negligence, or willful or wanton disregard for the safety of the participant; and

(ii) that act or omission causes the injury; or

(e) intentionally injures or causes the injury to the participant.

Utah Code Ann. § 78B-4-202(2) (2008)  
(emphasis added).<sup>FN1</sup>

FN1. This section was renumbered and amended after the instant case arose, but the relevant portions have not changed. See Utah Code Ann. § 78B-4-202 amend. notes (2008). We cite to the current version of the statute for the reader's convenience.

¶ 11 Penunuri argues that the “plain language provides that [Sundance] is not to be held liable for inherent risks associated with equine activity yet *must* be held liable for its acts or omissions of negligence.” (Emphasis added.) She further argues that enforcing the Release “would make everything after ‘unless’ in [section 202(2)] superfluous.” Sundance responds that while the Act is designed to ensure that equine activity sponsors would not be liable for specified inherent risks, “nothing in the Act suggests that the Legislature intended to change or alter the liability of equine sponsors for noninherent risks or the contractual protections that might be afforded to them through a release.” As noted above, Utah case law recognizes that pre-injury releases releasing a party from liability for its own negligence are generally enforceable. Thus, in effect, Penunuri asks us to read section 202 to overrule that case law insofar as equine and livestock activities are concerned.

¶ 12 The principal obstacle to reading section 202 to invalidate pre-injury releases is that it does not mention releases.<sup>FN2</sup> Accordingly, if section 202 invalidates pre-injury releases, it does so by implication only. As it applies to this case, section

202 is clear that an equine activity sponsor is protected from liability for the injury or death of a participant due to the inherent risks of equine activity *unless* the sponsor is negligent, grossly negligent, or worse. But what then? According to Penunuri, once negligence is established, the Equine Act mandates liability, subject only to statutory defenses. According to Sundance, once negligence is established, the Equine Act ceases to apply, and the case becomes a garden variety negligence case controlled by the rules governing such cases, including common law defenses.

FN2. The same is true of the legislative history to which Penunuri directs our attention.

[9] ¶ 13 Reading this language to abrogate common law defenses, invalidate pre-injury releases, and mandate liability stretches the statutory language past its plain meaning. We agree with Sundance and the trial court that section 202 protects a sponsor from liability arising from the inherent risks of equine activities unless the sponsor is negligent, in which case it offers no protection. However, the sponsor remains free to assert all other applicable defenses, including, if appropriate, release. The “unless” clause thus defines the limit of the Act's benefits to sponsors; it does not impose new burdens upon them. The Equine Act therefore \*1053 leaves undisturbed case law permitting sponsors to contractually limit their liability for acts of ordinary negligence. See generally *Russ v. Woodside Homes, Inc.*, 905 P.2d 901, 904 (Utah Ct.App.1995) (“Generally, parties ... may properly bargain against liability from harm caused by their ordinary negligence.”). This reading does not render the language following “unless” superfluous, as Penunuri argues. That language is still given its desired effect, which is to circumscribe the protections offered by the Equine Act.<sup>FN3</sup>

FN3. Because our supreme court has declined—albeit in a noncommercial setting—to “extend strict liability to owners and keepers of horses,” see *Pullan v. Stein-*



*metz*, 2000 UT 103, ¶ 7, 16 P.3d 1245, one might question whether the negligence exception to the Equine Act's coverage circumscribes its protections to the point of rendering them illusory.

[10] ¶ 14 Thus construed, section 202 is in harmony with section 203 of the Equine Act. *See LPI Servs. v. McGee*, 2009 UT 41, ¶ 11, 215 P.3d 135 (stating that statutes are to be read in harmony with other statutes in the same chapter). Section 203 requires equine or livestock activity sponsors to provide notice to participants that the sponsor is not liable for certain inherent risks of the equine activity. *See Utah Code Ann. § 78B-4-203(1) (2008)*. This notice may be provided by posting a sign in a prominent location or by "providing a document or release for the participant ... to sign." *Id.* § 78B-4-203(2)(b) (emphasis added). We do not read the word "release" in this section to refer merely to a document notifying the participant that the sponsor is insulated against claims arising from certain inherent risks of participating in the activity. Because the statutory term "document" already conveys this meaning, such a reading would impermissibly render "release" redundant. *See State v. Maestas*, 2002 UT 123, ¶ 53, 63 P.3d 621. Furthermore, a release does more than provide notice. "The main purpose of a release typically is the voluntary relinquishment of a claim or right by one who, absent the release, could have enforced such a claim or right." 66 Am.Jur.2d *Releases* § 1 (2010). We therefore conclude that section 203 presupposes the continued use of releases between equine activity sponsors and participants. Given the other provisions of the statute, a release in this context can have only one purpose, which is to release in advance a sponsor from liability for that sponsor's ordinary negligence. Accordingly, we conclude that the plain language of the Equine Act does not invalidate the Release.

#### B. Public Policy as Expressed in the Equine Act Does Not Invalidate the Release.

[11][12][13] ¶ 15 Penunuri next contends that

the Release violates public policy as expressed in the Equine Act.<sup>FN4</sup> It is well settled that "preinjury releases must be compatible with public policy." *Pearce v. Utah Athletic Found.*, 2008 UT 13, ¶ 15, 179 P.3d 760. However, we proceed with great caution when considering whether to invoke public policy as a basis for judicial determinations:

FN4. Penunuri does not argue that the Release violates public policy under the so-called *Tunkl* standard. *See generally Hawkins v. Peart*, 2001 UT 94, ¶ 9 n. 3, 37 P.3d 1062 (discussing the public policy standard set forth in *Tunkl v. Regents of the University of California*, 60 Cal.2d 92, 32 Cal.Rptr. 33, 383 P.2d 441, 445-46 (1963)).

[P]ublic policy is a protean substance that is too often easily shaped to satisfy the preferences of a judge rather than the will of the people or the intentions of the Legislature.... [T]he theory of public policy embodies a doctrine of vague and variable quality, and, unless deducible in the given circumstances from constitutional or statutory provisions, should be accepted as a basis for judicial determinations, if at all, only with the utmost circumspection.

*Rothstein v. Snowbird Corp.*, 2007 UT 96, ¶ 10, 175 P.3d 560 (internal quotation marks omitted); *see also Fairfield Ins. Co. v. Stephens Martin Paving, LP*, 246 S.W.3d 653, 672 (Tex.2008) ("[P]ublic policy ... is a very unruly horse, and when once you get astride it you never know where it will carry you." (quoting *Richardson v. Mellish*, (1824) 2 Bing. 229, 252, 130 Eng. Rep. 294, 303)). "For a contract to be void on the basis of public policy, there must be a showing free from doubt that a contract is against public policy." \*1054 *Ockey v. Lehmer*, 2008 UT 37, ¶ 21, 189 P.3d 51 (internal quotation marks omitted).

[14] ¶ 16 Generally, "our public policy does not foreclose the opportunity of parties to bargain for the waiver of tort claims based on ordinary neg-

ligence.” *Berry v. Greater Park City Co.*, 2007 UT 87, ¶ 15, 171 P.3d 442. However, Penunuri argues that the Equine Act establishes a public policy prohibiting an equine sponsor from limiting its liability for negligence via a pre-injury release. She analogizes to the Utah Supreme Court’s invalidation of a pre-injury release based on public policy grounds under Utah’s Inherent Risks of Skiing Act (the Skiing Act). *See generally Rothstein*, 2007 UT 96, 175 P.3d 560; Utah Code Ann. §§ 78–27–51 to –54 (2002 & Supp.2007).

¶ 17 In *Rothstein v. Snowbird Corp.*, 2007 UT 96, 175 P.3d 560, a skier collided with a retaining wall and was injured. *See id.* ¶ 1. He sued the ski resort, alleging negligence. *See id.* The trial court granted the ski resort’s motion for summary judgment based on two release and indemnity agreements signed by the skier. *See id.* ¶ 5. The agreements provided that the skier waived all claims, “including those caused by [the resort’s] negligence.” *Id.* ¶ 4. The supreme court reversed in a 3–2 decision, holding that the releases violated public policy as declared in the Skiing Act. *See id.* ¶ 1.

¶ 18 The first section of the Skiing Act contains an extensive statement of its public policy underpinnings:

“The Legislature finds that the sport of skiing is practiced by a large number of residents of Utah and attracts a large number of nonresidents, significantly contributing to the economy of this state. It further finds that few insurance carriers are willing to provide liability insurance protection to ski area operators and that the premiums charged by those carriers have risen sharply in recent years due to confusion as to whether a skier assumes the risks inherent in the sport of skiing. It is the purpose of this act, therefore, to clarify the law in relation to skiing injuries and the risks inherent in that sport, to establish as a matter of law that certain risks are inherent in that sport, and to provide that, as a matter of public policy, no person engaged in that sport shall recover from a ski operator for injuries resulting from

those inherent risks.”

*Id.* ¶ 12 (quoting Utah Code Ann. § 78–27–51 (2002 & Supp.2007)). Based on that public policy statement, the *Rothstein* court observed that the Legislature found it “necessary to immunize ski area operators from liability for injuries caused by inherent risks because they were otherwise being denied insurance coverage or finding coverage too expensive to purchase.” *Id.* ¶ 14. The court thus reasoned that “[t]he central purpose of the [Skiing] Act ... was to permit ski area operators to purchase insurance at affordable rates.” *Id.* ¶ 15. A public policy “bargain [was] struck by the [Skiing] Act,” the court held, which provided that “ski area operators would be freed from liability for inherent risks of skiing so that they could continue to shoulder responsibility for noninherent risks by purchasing insurance.” *Id.* ¶ 16. Because the purpose of the Skiing Act was to provide ski resorts with the ability to purchase affordable liability insurance, the court held that the Legislature had determined that ski resorts could not “use pre-injury releases to significantly pare back or even eliminate their need to purchase the very liability insurance the [Skiing] Act was designed to make affordable.” *Id.* Accordingly, the court held that the releases offended public policy. *See id.*

[15] ¶ 19 Penunuri argues that the Equine Act “was intended to mirror” the Skiing Act and that the two acts are “nearly identical.” She argues, therefore, that the Equine Act struck the same bargain as the Skiing Act and thus prohibits pre-injury releases for negligence. Penunuri points out that both statutes “limit participants from recovering from inherent risks of the sport. Both define the inherent risks as those that are integral to the sport. Both acts require that the operator or sponsor post a sign listing the inherent risks. Both acts permit a participant to recover from acts of the sponsor or operator’s negligence.” Notwithstanding those similarities, however, only the Skiing Act includes a declaration of public policy. That public policy declaration was \*1055 the centerpiece of *Rothstein*.



From it, the supreme court gleaned “[t]he central purpose of the [Skiing] Act,” *id.* ¶ 15, and extrapolated “the bargain struck by the [Skiing] Act,” *id.* ¶ 16, which supported its ultimate holding that Snowbird’s releases were invalid. *See id.* “Few legislative expressions of public policy speak more clearly to an issue,” the court noted, “than the public policy rationale for Utah’s ... Skiing Act speaks to preinjury releases for negligence.” *Id.* ¶ 11. The Equine Act has no equivalent statement of public policy. In fact, it has no statement of public policy at all. We are instead left with only the text of the Equine Act from which to deduce a public policy. *Rothstein* itself warns that “[t]o pluck a principle of public policy from the text of a statute and to ground a decision of this court on that principle is to invite judicial mischief.” *Id.* ¶ 10. Consequently, we decline to do so.<sup>FN5</sup>

FN5. In *Street v. Darwin Ranch, Inc.*, 75 F.Supp.2d 1296 (D.C.Wyo.1999), a rider suing a dude ranch for a fall from a horse on a trail ride sought to invalidate a preinjury release based on the Wyoming Recreation Safety Act. *See id.* at 1297. Similar to the Equine Act, the Wyoming Recreation Safety Act shields providers of recreational activities from claims based on the inherent risks of those activities. *See id.* (citing Wyo. Stat. Ann. § 1-1-123 (1999)). The court concluded, “The Release is, at the very least, consistent with the public policy expressed by the Act, if not in furtherance of it.” *Id.* at 1300-01.

#### CONCLUSION

¶ 20 The plain language of the Equine Act provides statutory protection to equine sponsors for inherent risks of equine activities. The portion of the Equine Act excluding negligent, grossly negligent, and intentional acts from its protection does not invalidate preinjury releases of ordinary negligence. In addition, while the Equine Act and the Skiing Act share a number of similarities, only the latter features a declaration of public policy. Ac-

cordingly, while the supreme court in *Rothstein* had a basis in the Skiing Act to invalidate preinjury releases, we see no equivalent basis in the Equine Act for doing the same.

¶ 21 Affirmed.

¶ 22 WE CONCUR: JAMES Z. DAVIS, Presiding Judge and MICHELE M. CHRISTIANSEN, Judge.

Utah App., 2011.

Penunuri v. Sundance Partners, Ltd.

257 P.3d 1049, 684 Utah Adv. Rep. 30, 2011 UT App 183

END OF DOCUMENT