



EQUINE INSURANCE

Understanding the Fine Print of your Policy

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All horse owners and riders know that equine activities can be dangerous. Despite best efforts to stay safe around horses, accidents happen. When an accident occurs, insurance coverage may be available to respond to the injury or property damage. However, determining whether there is insurance coverage in a particular situation is frequently unclear due to the technical nature of policy language.

People are often confused or angry when an insurer denies coverage for claims which, on their face, seem to be clearly covered by insurance. This article aims to help you understand the insurance coverage most commonly available for personal injury and property damage arising from equine-related accidents, why insurers may deny claims, and what to do if your claim is denied.

EQUINE ASSOCIATION COVERAGE

Many Canadian equine associations provide automatic insurance coverage to their members as a result of membership in the association. Some of these associations include Alberta Equestrian Federation, Canadian Pony Club, Equine Association of Yukon, Horse Council of British Columbia, Island Horse Council, New Brunswick Equestrian Association, and Saskatchewan Horse Federation. This is not an exhaustive list; there may be other associations providing automatic insurance coverage upon membership.

When joining an equine association, you should ask what kind of insurance coverage is available. If there is no coverage through the association, you will likely need to obtain insurance from another source.

If you have insurance prior to joining an equine association, it is generally a term of the equine association's insurance policy that your other insurance will be "primary" and the equine association insurance policy will be "excess." This means that if a claim is made, your other insurance will be called upon first to pay the



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claim. The equine association insurance will only have to pay if the other insurance is insufficient to pay the entirety of the claim.

INSURANCE AVAILABLE THROUGH EQUINE ASSOCIATION COVERAGE

The types of insurance coverage commonly available through an equine association are as follows:

Liability Insurance

Liability insurance provides coverage for claims against you by third parties for property damage or personal injury arising out of the ownership or use of a horse, or arising out of your participation in most equine-related activities. The limit of this coverage is usually \$5,000,000.

Not all claims for property damage or personal injury will be covered. Most equine association insurance excludes coverage in the following circumstances:

- The riding of a member's horse by any person who is not a member in good standing of an equine association or who is not an equine

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professional, or not riding the horse on a pre-purchase test ride. In other words, if you allow a person who is not an association member or not an equine professional to ride your horse, there is no coverage for property damage or personal injury.

- Any lawsuit brought against you by your own spouse, or by any relative and/or dependant(s) residing in your household. This means that any claim made between immediate family members will not be

covered by the policy.

- The "commercial use" of horses as well as participation in rough stock rodeo events, pari-mutuel racing, or unsanctioned racing activity and providing coaching, lessons, instruction to others, and participation in horse pulling competitions. "Commercial use" refers to any equine activity from which you generate an income. This includes activities such as coaching, lessons, trail rides, or even partial leases for which the

Transportation insurance for non-owned horses protects against lawsuits for the death of another person's horse while you are transporting that horse. This coverage does not apply to commercial horse transport.

payment exceeds your actual expenses.

- Coverage for Canadian residents is worldwide, but lawsuits must be brought against you in Canada. If you are a member but your principal residence is outside of Canada, then your coverage is restricted to equine activities that occur in Canada.

Accidental Death & Dismemberment

Accidental death and dismemberment (AD&D) coverage provides a lump sum payment (the "principal sum") if you suffer from a scheduled (i.e., listed in the policy) catastrophic and permanent injury or death that arises from participation in equine-related activities. The amount payable depends upon the injury sustained and is either a multiple of the principal sum or a portion of the principal sum. Not all injuries are covered under this section of the policy.

AD&D coverage only applies to members under the age of 90 years and does not provide compensation for lost wages. It is not short or long term disability coverage.

Transportation Insurance for Non-Owned Horses

This coverage protects against lawsuits for the death of another person's horse while you are transporting that horse. This coverage is limited to \$10,000 per horse and \$50,000 per accident. Commercial transportation of horses is not covered. This coverage does not apply to horses you own.

ADDITIONAL INSURANCE

Additional insurance coverage may be available through your membership in an equine association. This coverage is not automatically provided by virtue of your membership and must be purchased for an extra premium. The additional coverage available can include:

Members Named Perils

This coverage applies to the death of an "owned" horse resulting from specifically listed perils such as fire, lightning, collision during transport, windstorm/hail, earthquake, flood and attack by a dog or wild animal. The coverage is usually limited to \$10,000 and losses are restricted to one claim per year.

Weekly Accident Indemnity Coverage

This type of coverage provides income replacement in the event you are unable to work due to an accident. This type of coverage includes, but is not limited to, injuries arising from an equine-related accident. The duration of income replacement benefits may be limited to 26 weeks.

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Additional Accidental Death & Dismemberment Coverage

This coverage provides an additional \$50,000 principal sum that also includes benefits for fracture and dental coverage not included in the basic coverage. This coverage is available for people under the age of 75.

Members' Tack

This insurance covers tack and equipment from loss or damage anywhere in North America. The limit is \$10,000 and does not cover clothing or protective equipment worn by riders, wear and tear, mysterious disappearance, or horse drawn vehicles.

If you require insurance beyond the basic and additional insurance provided through membership in an equine association, you should consult a knowledgeable insurance broker who can assist you in obtaining additional insurance coverage.

WHO MAKES DECISIONS ON COVERAGE?

A recent horse-related injury claim has made news in British Columbia as to how claims for insurance coverage are decided. In this case, the rider was a member of Horse Council of British Columbia and, by reason of that membership, entitled to \$30,000 AD&D coverage. She suffered a fall from her horse and broke her neck. She was paralyzed from the armpits down. She subsequently made a claim for AD&D, which was apparently denied on the basis she did not suffer a "permanent disability" within the meaning of the policy.

This case called significant attention to issues surrounding the interpretation of insurance policies and how coverage decisions are made. Many people were outraged by the insurer's decision to deny coverage, believing it to be wrong and unfair.

Understanding how and why coverage decisions are made in claims requires an understanding of how insurance is provided.

The insurer (also sometimes called an "underwriter") is generally an insurance company offering an insurance policy in exchange for payment of a premium paid by the insured. The policy is usually sold by an insurance broker. The policy pays for specific losses, which are uncertain or accidental. The premium is set by the insurer on the basis of, among other things, an assessment of how much risk the insured presents.

The broker is not involved in making decisions on coverage. Whether a claim is covered by the policy is determined by the insurer. In the case above, the decision to deny the rider's claim for AD&D coverage would have been determined by the insurer underwriting the AD&D policy, not the Horse Council of British Columbia or the broker who sold the policy. Presumably, the coverage decision (at least in the first instance) was determined on the basis of the meaning of





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▲ Most equine association insurance excludes coverage for property damage or personal injury if you allow a person who is not an equine professional or an association member to ride your horse, or if you allow your horse to be used in riding lessons from which you generate income.

▲ Horse owners and riders are aware of the potential risks associated with horse-related activities, and are urged to have the appropriate insurance to cover any potential accident or loss.

"permanent disability" within the AD&D coverage. The definition of this term may vary depending upon the policy and the insurer.

If coverage is denied by the insurer and the insured believes there should be coverage, the insured can sue the insurer in court. The court will then make a determination as to whether coverage exists.

HOW IS COVERAGE DETERMINED?

The language used in insurance policies is technical and intended to have precise meaning. For example, although it seems to be common sense, there are many cases interpreting the meaning of "arising out of," which is a term used in liability policies. Coverage is provided for personal injury or property damage "arising out of" certain equine activities.

When a claim is made by an insured, the insurer will interpret the policy based on its understanding of the policy and previous claims. The insurer may seek legal advice from a lawyer as to the correct policy interpretation. The insurer will then provide its decision on coverage to the insured by either accepting or denying the claim.

For coverage to exist under a liability policy, the claim must fall within the "insuring agreement." This part of the policy states that the policy will cover all sums that the insured is obligated to pay by reason of liability imposed by law for compensatory damages for specified losses such as property damage due to an accident or occurrence. The particular grant of coverage will depend upon the precise words of the policy.

The onus is on the insured to prove that a claim has occurred which falls within the grant of coverage. Generally speaking, the insured will have to show that the claim relates to an accident or uncertain event for loss or damage intended to be covered by the

policy, which falls within the policy period.

Even if the claim falls within the insuring agreement, the policy must be reviewed to determine there are no applicable exclusion clauses which deny coverage. An exclusion clause eliminates coverage for specific events.

The court has specific rules of interpretation to guide coverage disputes. The court focuses on interpreting the words of the policy so as to promote the parties' "true intent" at the time of entering into the policy. The courts have said that effect should be given to the "clear language" of the policy. Where the language of the policy is ambiguous, the courts have created rules to assist in resolving the ambiguity.

If the court rules that coverage exists, the insurer will be ordered to pay the loss pursuant to the terms of the policy, not to exceed the financial limits of the policy.

Going back to the example above, the paralyzed rider would have to prove to the insurer that her injury fell within the definition of "permanent disability" in the AD&D coverage provided by the Horse Council of British Columbia policy. This question must be answered by reference to the particular language of that policy and express definition of "permanent disability" in that policy, rather than any general understanding or idea as to what this term means.

Although the onus is on the insured to prove their claim falls within coverage, the insurer must be fair and act in good faith when handling the claim. A failure to do so may result in punitive damages against the insurer.

Given the potential risks associated with horse-related activities, you should ensure that you have appropriate insurance to cover any potential accident or loss. Many people feel that insurance is not worth the money because insurers "never pay" or always deny claims. It is true that insurers may take coverage positions which seem unfair on their face. That, in itself, is not a good reason to avoid obtaining insurance.

Whether an insurer is justified in denying an insured's claim must be determined by careful consideration of the particular insurance policy language in issue in each case. If an insured believes coverage is available under the policy, a claim can be pursued against the insurer. The courts have stated that an insurer is not permitted to interpret an insurance policy which would "nullify" the purpose for which the insurance was sold or to render coverage "practically illusory."



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