

Know the Limitations and Specifications in Racehorse Insurance Policies

By Steven Pudell, Abigail Damsky

Horse owners and breeders should be aware of the possible limitations in their racehorse insurance coverage policy. Two recent coverage disputes decided in favor of the insurance company illustrate how policy exclusions and limitations can undercut coverage. These cases highlight the need to carefully consider policy language in light of one's own practices and possessions.

In a recent case in Kentucky, a horse owner and breeder found out it was not covered after its prized sire died. In *Creek Equine, LLC v. North American Specialty Insurance Company*, No. 5:2022-cv-00095 (E.D. Ky. Sept 16, 2024), Cypress Creek Equine (Cypress) paid for a mortality insurance policy for stallion Laoban but ultimately received no insurance coverage for the stallion's death – even though Laoban was insured for over \$2 million. Cypress also insured Laoban for infertility caused by accident, sickness and disease. Cypress Creek is instructive because it provides guidelines for owners and breeders on how a mortality insurance policy may be construed.

Cypress, a limited liability company engaged in breeding and racing horses, owned Laoban, an 11-year-old horse that was born in 2013, raced from 2015 to 2016, and was ultimately retired to stud. Cypress bought mortality insurance for Laoban and other horses in the stable from North American Specialty Insurance (NAS). NAS insured Southern Equine Stables, LLC and Cypress' shares in Laoban between March 11, 2016 through Laoban's death. In May 2021 Laoban unexpectedly died after suffering an allergic reaction after being given vitamin and mineral supplements – together known as a “Black Shot” – to “increase his interest in breeding.”

The NAS policy provided insurance coverage “for death of a horse for any reason except one specifically listed under the Exclusions below.” NAS argued that there was no coverage under Exclusion (f), the “Unauthorized Medication Exclusion.” This exclusion purports to preclude coverage for loss resulting from administration of drugs or medication unless done or directed by a veterinarian and certified by him to have been of “a preventive nature or necessitated by accident, sickness or disease of the horse.” The court found that the “Black Shot” was considered “medicine” and a “drug” because the three vitamins in the shot contained a warning label noting “Federal law restricts this drug to use by or on order of a licensed veterinarian.” Further, all the ingredients were regulated by the FDA and have a National Drug Code. While NAS failed to define “drug” and “medication,” the court found that Cypress could not reasonably expect coverage for the “Black Shot” under the ordinary definition of “drug” and “medication.” The court also concluded that the “Black Shot” was not of preventative nature or necessitated by accident, sickness, or disease. The shot had one purpose: increase Laoban's energy levels for breeding. Coverage was denied under this exclusion.

NAS also invoked the Proper Care Exclusion (Exclusion (a)). This exclusion provided that there is no coverage “resulting from (1) failure to provide proper care and attention for the horse; or (2) malicious, willful or other intentional acts by you.” The court found that proper care meant a “degree of care that a prudent and competent person engaged in the same line of business or endeavor would exercise under similar circumstances.” The Court accepted testimony that the doctor who administered the shot was suspended and violated the standard of care.

After Cypress Creek, horse owners and breeders should be aware that their mortality policy may be limited beyond their initial reasonable expectations. As in this case, certain types of shots given to racehorses will be excluded. It also means that the insurance company may secondguess the decisions of your horse’s veterinarian staff.

Another coverage issue facing horse owners stems from differences in coverage accorded to horses in different classifications, such as racehorses and pleasure horses. For example, while medical insurance is available for pleasure horses and will cover surgical procedures and loss of use, this coverage is generally not available for racehorses. Obviously, proper classification is critical.

In *Harrison v. Great Am. Assur. Co.*, 227 S.W.3d 890, 891 (Tex. App. 2007), a thoroughbred filly, Oma, was insured as a racehorse. After Oma was injured, her owner called the insurance agent and changed the classification from racehorse to pleasure horse on the insurance policy, resulting in a premium overpayment. The overpayment was applied to the remaining payments due on the policy. Oma recovered and began race training again but was injured and had to be euthanized shortly after her recovery.

Great American denied coverage, claiming that while Oma was insured as a “pleasure horse” at the time of her death, she was being used as a racehorse at the time of her injury. The terms “racehorse” and “pleasure horse” were not defined in the policy. Oma’s owners argued that a reasonable interpretation of “racehorse” is a horse that has raced, not a horse that is being trained to race but has never raced. Further, a racehorse is also a pleasure horse because it brings pleasure to its owner; and a pleasure horse could also be a racehorse if the horse races another pleasure horse to see which one reaches the barn first. Essentially, because the policy terms were undefined, there was no distinction between the terms. This could be a reasonable interpretation. Nonetheless, the court found that these policy terms were not ambiguous, and that the definition of racehorse meant “a horse bred and trained for racing.” Oma training as a racehorse made her a racehorse, even though she never competed. The terms “racehorse” and “pleasure horse” were not interchangeable, even though the policy did not define the terms. This interpretation of “racehorse” was crucial because without it the policy classifications would have been meaningless.

Horse owners and breeders seeking racehorse insurance coverage should be sure to pay particular attention to their insurance policies. They should consult with an experienced insurance agent in this field before purchasing a policy and ask the agent to compare different policies and explain policy provisions. Before purchasing a policy, owners and breeders should remember that courts have interpreted undefined terms in the policy through their ordinary meaning: a racehorse does not have to have competed to be considered a “racehorse,” and a mortality insurance policy has specific and limited coverage.

While the coverage battles discussed above were resolved in favor of the insurance company, that is by no means always the case, and horse owners and breeders should not take coverage denials at face value. Insurance companies’ initial denials and refusal to pay out on the policy that they sold can sometimes be

reversed by legal communication and negotiation – and have often been overturned by courts finding that insurance companies have interpreted their coverage grants too narrowly or their policy exclusions too broadly. In those cases, the insurance companies are required to pay out under the policy and, under certain circumstances, pay additional damages to the policyholder.

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