



Ankin Law Office LLC

Protecting the Rights of Injured Workers

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Illinois Appellate Court Addresses Racetrack's Liability



The First District Appellate Court of Illinois recently addressed the liability of a property owner for negligently maintaining its premises in *Morrissey v. Arlington Park Racecourse LLC*, No. 1-09-3460 (2010).

In *Morrissey*, the plaintiff was injured when the horse he was riding slipped and fell. The plaintiff filed a [personal injury lawsuit](#), alleging that the horse slipped and fell on a puddle of soapy water located on the asphalt next to the training track. As the plaintiff rode the horse off the track, the horse stepped in the puddle, slipped, and fell, injuring the plaintiff in the process. The plaintiff filed suit alleging that the defendant negligently maintained the racetrack.

The defendant claimed that it was not liable, in part, because the condition of the grounds was open and obvious and thus the plaintiff should have protected himself from such an obviously dangerous condition.

In response, the plaintiff asserted that the “deliberate encounter” exception applied—namely that the defendant should have known that a reasonable person in the plaintiff’s shoes would have continued forward through the soapy puddle since the advantages of doing so outweighed the disadvantages.

The Court first explained that the “deliberate encounter” exception is premised on the landowner’s knowledge of the premises and its expectation regarding the invitee’s actions in the face of a dangerous condition. Applying this rule, the Court then agreed with the plaintiff, holding that:

In the present case...it is impossible to conclude, as a matter of law, that the defendant, which was clearly aware that on a daily basis riders used the east exit because of its proximity to the training track, so as to exercise all of their horses within a span of only five hours, could not have anticipated that the plaintiff would elect the choose east exit, despite the dangerous condition there.

Thus, the Court overturned the lower court’s decision and concluded that the lawsuit against the defendant could proceed.

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