

TESTIMONY FOR THE HOUSE JUDICIARY COMMITTEE
BY THE PENNSYLVANIA TRIAL LAWYERS ASSOCIATION

THE HONORABLE THOMAS CALTAGIRONE, CHAIRMAN
ON HOUSE BILL 1277, PRINTER #1418

July 20, 1993

BY: Mark E. Phenicie, Esq.

HONORABLE CHAIRMAN CALTAGIRONE, HONORABLE COMMITTEE MEMBERS OF THE HOUSE JUDICIARY COMMITTEE, LADIES AND GENTLEMEN. THANK YOU VERY MUCH FOR INVITING THE PENNSYLVANIA TRIAL LAWYERS ASSOCIATION TO TESTIFY AND CONTRIBUTE TO TODAY'S HEARING ON HOUSE BILL 1277, PRINTER NUMBER 1418.

AS YOU UNDOUBTEDLY KNOW, THE PENNSYLVANIA TRIAL LAWYERS ASSOCIATION HAS TRADITIONALLY OPPOSED LEGISLATION WHICH WOULD REDUCE OR MODIFY RIGHTS AND PROTECTIONS GIVEN TO PENNSYLVANIANS UNDER THE UNITED STATES AND PENNSYLVANIA CONSTITUTIONS. AS YOU UNDOUBTEDLY KNOW, THE RIGHT TO A TRIAL-BY-JURY IS AN INTEGRAL PART OF THE BILL OF RIGHTS, AND IS THE WATCHWORD OF OUR ASSOCIATION.

IN RECENT YEARS, WE HAVE NOTICED A SIGNIFICANT INCREASE IN INTRODUCTION OF WHAT WE REFER TO AS "BOUTIQUE" IMMUNITY BILLS, SUCH AS 1277, WHICH ATTEMPTS TO PROTECT CERTAIN INDUSTRIES SUCH AS 1277 TRIES TO PROTECT EQUINE ACTIVITIES. UNFORTUNATELY, NONE OF THESE SO-CALLED "BOUTIQUE" IMMUNITY BILLS SERVE IN ANY WAY TO ENCOURAGE OWNERS OR THOSE SEEKING LEGISLATIVE CHANGES TO IMPROVE SAFETY, BUT, RATHER, TO ATTEMPT TO LIMIT LIABILITY OF THE OWNERS OR OPERATORS AFTER INJURIES OCCUR. IT IS OUR BELIEF THAT THE BEST AND MOST EFFECTIVE WAY TO REDUCE THE NUMBER OF LIABILITY CASES IS IMPROVE SAFETY AND TRAINING OF OPERATORS, RATHER THAN TO LIMIT THE RIGHTS OF PENNSYLVANIANS AFTER THEY ARE INJURED.

WE OPPOSE HOUSE BILL 1277 FOR THE AFOREMENTIONED GENERAL REASONS, AS WELL AS FOR SOME SPECIFIC LANGUAGE CONTAINED IN THIS BILL. PENNSYLVANIA HAS ALWAYS RECOGNIZED A SPECIAL PROTECTION AND HAS A NATIONAL REPUTATION

FOR THE PROTECTION OF MINOR CHILDREN. UNDER PENNSYLVANIA LAW CHILDREN ARE PROTECTED BY COMMON AND STATUTORY LAW IN MANY SITUATIONS, INCLUDING LIABILITY CASES SUCH AS WHAT WE ARE CONSIDERING HERE TODAY. IT HAS BEEN THE LAW OF PENNSYLVANIA FOR DECADES THAT CHILDREN FROM BIRTH TO 7 YEARS ARE CONCLUSIVELY PRESUMED TO BE INCAPABLE OF NEGLIGENCE. FROM THE AGES OF 8 TO 14 CHILDREN ARE PRESUMED TO BE INCAPABLE OF NEGLIGENCE BUT THE PRESUMPTION IS A REBUTTABLE ONE THAT WEAKENS AS THE 14TH YEAR IS APPROACHED. DUNN VS. TETI 280 PA. SUPER. 399, 421 A.2D 782 (1980). CERTAINLY, MANY CHILDREN WHO ENGAGE IN EQUINE ACTIVITIES ARE UNDER THIS AGE. THE IMPACT OF HOUSE BILL 1277 WOULD BE TO ABROGATE THE LONG-STANDING PUBLIC POLICY FAVORING PROTECTION OF CHILDREN AND OBLITERATE A MINOR CHILD'S PROTECTION BY IN EFFECT LEGISLATIVELY DECLARING ALL CHILDREN CAPABLE OF NEGLIGENCE, BUT, EVEN WORSE, LEGISLATIVELY ESSENTIALLY DECLARING EVERY CHILD FROM 1 TO 14 TO HAVE ASSUMED THE RISK. HOUSE BILL 1277 IS AN ATTEMPT TO PUSH THE CONCERN FOR SAFETY FROM THE OPERATOR TO THE PATRON.

ADDITIONALLY, THE STANDARD OF NEGLIGENCE WHICH REQUIRES "WILLFUL AND WANTON REGARD FOR THE SAFETY OF THE PARTICIPANT AND THAT ACT OF OMISSION CAUSED THE INJURY" IS A STANDARD THAT IS SO FAR BEYOND THE REALM OF NORMAL IMMUNITY STATUTES IN PENNSYLVANIA, THAT IN AND OF ITSELF WOULD BE REASON TO OPPOSE THIS LEGISLATION. INDEED, THIS IS NOT A VOLUNTEER OR CHARITY INSTITUTION, BUT RATHER AN INDUSTRY FOR PROFIT.

PARENTS AND CHILDREN MUST RELY UPON OWNERS OF BUSINESSES AND MAKERS OF TOYS TO PROVIDE SAFE PLACES TO LEARN RECREATIONAL ACTIVITIES AND SAFE TOYS TO PLAY WITH. PARENTS AND THEIR CHILDREN SHOULD HAVE A RIGHT TO RELY UPON

THE EQUINE OPERATORS TO PROVIDE A SAFE PLACE FOR THEM TO LEARN THIS
ACTIVITY. AFTER ALL, PEOPLE WHO PROFIT FROM THIS RECREATIONAL SPORT SHOULD
HAVE SAFETY AS THEIR PARAMOUNT CONCERN.

LASTLY, SECTION FIVE, BEGINNING ON LINE 17 ON PAGE FIVE, ENTITLED
"POSTING AND NOTIFICATION" SHOULD BE ENTITLED "WAIVER OF LIABILITY." THE
SO-CALLED WARNING NOTICE SPECIFIED IN SUBSECTION "B" IS NOT A WARNING AT
ALL, BUT A WAIVER OF LIABILITY. THE LANGUAGE MANDATED IN THE "WARNING"
NOTICE DOES ABSOLUTELY NOTHING TO WARN ANY SPECTATORS OR PARTICIPANTS ABOUT
THE INHERENT RISK OF EQUINE ACTIVITY, BUT SERVES MERELY AS A LEGAL BLANKET
TO INSURE IMMUNITY FOR THE OWNERS OF THE EQUINES. AS SUCH, THIS LANGUAGE
IS A DETERRENT TO THE SAFETY OF PARTICIPANTS AND SPECTATORS, NOT A TOOL
WHICH WILL REDUCE THE NUMBER OF INJURIES.

IT IS MY UNDERSTANDING THAT THE INSURANCE FEDERATION OF PENNSYLVANIA
WAS INVITED TO OFFER TESTIMONY TODAY AT THIS HEARING, AND IT IS ALSO MY
UNDERSTANDING THAT THEY DECLINED.

THE INSURANCE INDUSTRY AND THE INSURANCE FEDERATION OF PENNSYLVANIA
HAS NEVER BEEN ABLE TO STATE THAT CHANGES IN LIABILITY LAWS CAN OR WILL
PRODUCE LOWER LIABILITY PREMIUMS. IF THE INTENTION OF HOUSE BILL 1277 IS
TO REDUCE THE COST OF LIABILITY INSURANCE, MAY WE SUGGEST LANGUAGE THAT
WOULD MANDATE A SPECIFIC ROLLBACK IN RATES IF SUCH AUSTERE LIMITATIONS ARE
IMPOSED. IT HAS BEEN THE EXPERIENCE IN PENNSYLVANIA AND IN OTHER STATES
THAT EVEN IF LIMITATIONS OF RIGHTS THAT PENNSYLVANIANS ENJOY ARE PASSED,
THERE WILL BE NO REDUCTION IN GENERAL LIABILITY INSURANCE COSTS.

I NOTICED THAT ONE OF THE INDIVIDUALS WHO WILL BE TESTIFYING LATER TODAY IS ARTHUR GLATFELTER, WHO IS LISTED AS A STABLE OWNER. AS YOU UNDOUBTEDLY KNOW, MR. GLATFELTER HAS A WELL-DESERVED REPUTATION AS A PILLAR OF THE LIABILITY INSURANCE INDUSTRY NOT ONLY IN PENNSYLVANIA BUT NATIONALLY. PERHAPS HE CAN GIVE YOU A CLEARER INDICATION OF HOW MUCH - IF ANY - REDUCTION IN LIABILITY RATES COULD BE PROVIDED FOR THE OWNERS AND OPERATORS OF EQUINE ACTIVITIES IF HOUSE BILL 1277 IS ENACTED.

IN CONCLUSION, THEREFORE, LET ME REITERATE ONCE AGAIN THAT WE BELIEVE THAT THE SUREST AND CERTAINLY THE FAIREST WAY TO INSURE A REDUCTION IN THE NUMBER OF LIABILITY CLAIMS IS TO REDUCE THE NUMBER OF INJURIES, NOT STRIP AWAY THE RIGHTS OF PEOPLE AFTER THE INJURES HAVE OCCURRED. UNFORTUNATELY, HOUSE BILL 1277 IS NOT EVEN NEUTRAL IN ITS APPLICATION OF SAFETY PROVISIONS, BUT ACTUALLY TAKES A STEP BACKWARDS BY ITS REQUIREMENT OF A "WARNING" NOTICE THAT IS IN EFFECT NOTHING MORE THAN A WAIVER OF LIABILITY.

THANK YOU FOR THIS OPPORTUNITY TO TESTIFY.