



DAVID STEPHENSON | STAFF

John Joseph Munday, 64, lives in a nursing home in Illinois. His case set the precedent for backside workers' being considered independent contractors.

A PAINFUL PRECEDENT

For hard-luck jockey, workers' comp ruling is a chief regret

By Janet Patton

HERALD-LEADER STAFF WRITER

He was a small-time jockey who never rode in a major race, but John Joseph Munday's name lives on in Kentucky horse racing.

He's the jockey whose workers' compensation case essentially shut the door on coverage for most jockeys and exercise riders.

In the 25 years since the precedent-setting *Munday vs. Churchill Downs*, time, illness and alcohol have dimmed Munday's recollections. But he's clear about why he took on the racing establishment:

"I felt sorry for the backside," he said from a nursing home in Illinois. "That's why I did it. Exercise boys, grooms ... you know they can get hurt, and get fired right after it if they're not covered."

In 1976, Munday, then 36, was hurt in the first race on the June 26 card at Churchill. He was riding Jest Charmin when the horse stumbled on the backstretch. Munday was thrown from the saddle, and the colt fell on top of him.

Munday broke two vertebrae in his neck and eventually had surgery to fuse the bones.

He tried to get workers' comp benefits from A. Eugene Hancock, the Indiana attorney who owned and trained the horse. Eventually,



In April 1966, Munday won aboard Aljumar at Cahokia Downs in St. Clair, Ill. It was his biggest year: He had 448 mounts and won 53 races.

he filed a claim against both Hancock and Churchill Downs.

Munday lost his case at every turn, ending at the state Court of Appeals.

In February 1980, the appeals court ruled that a lower court was right to dismiss Munday's case; it found that Munday was not an employee of Hancock or Churchill. The ruling set the stage for some backside workers to be considered independent contractors, and it is still the legal standard.

Munday took a year off after his fall, but he returned to racing. His

last race was in 1980, in his native Illinois. That year, he had only six mounts, which had total earnings of \$1,400.

His best finish was a second place at Fairmount Park in Collinsville, Ill., that went off at more than 10 to 1. It was his last taste of fast glory.

He ended up in low-income senior citizens' housing in Collinsville, where neighbors knew him as a solitary, fragile man, aged beyond his years. He often borrowed money from his parish priest until his monthly disability check came.

"He was always right on the edge of having nothing," the Rev. John Beveridge said.

Beveridge said someone from Munday's housing complex would come to the church to pick up an envelope with a small cash loan inside. Then, in a few days or weeks, someone would bring the envelope back, money repaid.

Now Munday, 64, lives in a Belleville, Ill., nursing home, surviving on disability payments and dreaming of the day he'll make a comeback.

Steve Sexton, the president of Churchill Downs, said in an interview that Munday's circumstances are "unfortunate."

"I think that as an industry, we can't just let these situations go by the wayside. We've got to figure out collective solutions ... that these kinds of circumstances don't just fall through the cracks."

If Munday could change one thing about a career that was made up almost entirely of long shots, it would be the outcome of *Munday vs. Churchill Downs*.

"What good is working on the racetrack if you ain't got no coverage? ... The least they can do is give the people something for all the work ... all the blood and sand they go through on the backside."

A litany of accidents and injuries

Here's a sampling of ambulance runs reported at some Kentucky racetracks, plus Keeneland's training center on Paris Pike, from January 1999 to March 2004:

STOMPED BY HORSE, HIP PAIN 2/7/99, Ellis Park

LOSS OF CONSCIOUSNESS AFTER BEING HIT BY HORSE 5/19/99, Keeneland

THROWN FROM HORSE, BACK PAIN 5/20/99, Ellis Park

THROWN FROM HORSE, BACK PAIN 6/9/99, Ellis Park

FELL OFF HORSE, WRIST PAIN 6/15/99, Ellis Park

KICKED IN GROIN 10/11/99, Keeneland

FRACTURED FINGER TRYING TO CATCH HORSE 7/19/99, Ellis Park

KICKED BY HORSE, KNEE PAIN 7/26/99, Ellis Park

LACERATIONS AND FRACTURES VIA BEING KICKED BY HORSE 4/26/00, Keeneland

FELL OFF HORSE, HEAD INJURY 7/10/00, Ellis Park

DEHYDRATED, FELL FROM HORSE 7/26/00, Ellis Park

KNOCKED DOWN BY HORSE WITH LOSS OF CONSCIOUSNESS 8/14/00, training center

MULTIPLE INJURIES FROM HORSE INCIDENT 10/13/00, Keeneland

FALL AND KICK FROM HORSE 7/3/01, Keeneland

HORSE ACCIDENT, LEFT LEG PAIN 7/12/01, Ellis Park

HEAD INJURY, HIT IN FACE BY HORSE 7/25/01, Ellis Park

KICKED BY HORSE, RIGHT ARM INJURY 7/29/01, Ellis Park,

THROWN BY HORSE; SHOULDER, BACK PAIN 7/29/01, Ellis Park

UNCONSCIOUS AFTER FALLING FROM A HORSE 9/5/01, training center

THROWN BY HORSE, MULTI-TRAUMA 10/23/01, Ellis Park

LOWER BACK AND LEFT ARM PAIN FROM A FALL OFF HORSE 11/17/01, training center

KICKED BY HORSE, FEMUR FRACTURE 5/11/02, Ellis Park

FALL FROM HORSE, RIGHT HIP PAIN 5/15/02, Ellis Park

KICKED IN HEAD BY HORSE, ALTERED/LOSS OF CONSCIOUSNESS 8/2/02, Ellis Park

KICKED BY HORSE, RIGHT LEG PAIN 8/7/02, Ellis Park

KICKED BY HORSE, LACERATION TO LEFT LEG 8/16/02, Ellis Park

SADDLE BROKE, HEAD INJURY 8/17/02, Ellis Park

HORSE FELL, MULTIPLE TRAUMA 8/24/02, Ellis Park

INJURIES SUSTAINED FROM A FALL FROM HORSE 11/22/02, training center

FALL FROM HORSE 1/10/03, training center

POSSIBLE RIGHT ANKLE FRACTURE DUE TO HORSE STEPPING ON 4/13/03, Keeneland

LACERATIONS TO FOREHEAD, BITE TO CHEST 4/17/03, Keeneland

KICKED BY HORSE, FACIAL TRAUMA 6/22/03, Ellis Park

FELL FROM HORSE /ALTERED/LOSS OF CONSCIOUSNESS/APNEA 8/15/03, Ellis Park

KICKED BY HORSE, LACERATION TO HEAD 8/19/03, Ellis Park

HEAD INJURY FROM HORSE 11/4/03, Turfway Park

FALL FROM HORSE 1/7/04, Turfway Park

KICKED IN CHEST 2/4/04, Turfway Park

SOURCE: LOCAL FIRE DEPARTMENTS

ABOUT THIS REPORT



To produce "Wrong Side of the Track," Herald-Leader reporter Janet Patton reviewed thousands of documents, traveled hundreds of miles and interviewed dozens of racing-industry workers. Photographers David Stephenson and Pablo Alcalá spent weeks on the backside of Kentucky racetracks to capture his images; Stephenson traveled to Ohio, Florida and Illinois as well.

A team of Herald-Leader journalists helped with this report.

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Lawyer: Fix state's 'dirty little secret'

CONTRACTOR STATUS EXCLUDES EXERCISE RIDERS FROM COVERAGE

By Janet Patton

HERALD-LEADER STAFF WRITER

A lawyer who successfully fought to deny workers' compensation to an injured exercise rider says Kentucky's law is flawed.

Ronda Paul of Frankfort called it "the dirty little secret" of the racing industry.

Paul, who has owned racehorses, was referring to a Kentucky court ruling under which jockeys and freelance exercise riders are considered "independent contractors" — in other words, self-employed.

The rule essentially puts freelance exercise riders, who earn about \$10 a ride, in charge of supplying their own workers' compensation coverage in a decidedly dangerous line of work.

Trainers, meanwhile, are not required to cover the freelance riders who agree to exercise their horses.

In 2000, Paul represented a trainer who argued that he didn't owe benefits to an exercise rider named Humberto Galindo. Galindo had suffered a broken back after the colt he was riding broke down at Keeneland Race Course.

The case involved several facets, including whether Paul's client was, in fact, the horse's trainer. Ultimately, the decision boiled down to this: An administrative law judge, citing Kentucky case law, ruled that Galindo was an independent contractor, and thus not entitled to automatic coverage from anyone.

Kentucky courts have been deciding racing-injury cases on that basis for about 25 years.

But "I don't think it really is fair the way it's set up right now," Paul said. "I think there has to be a solution, a way to get insurance coverage for them."

Defining 'independent contractor'

Some lawyers contend that the legally established ways to define "independent contractor" don't apply to backside workers. Among other things, contract laborers set their own hours, own their own tools, control how the job is performed and are generally not integral to the business that hires them.

Exercise riders meet none of those standards, said lawyer Theresa Gilbert of Lexington, who represented Galindo.

"If the employer's supplying the tools, telling the person what to do, supervising the work, that usually will get you under the protection of being an employee," Gilbert said.

Not in Galindo's case — or many others like it in the racing industry.

Kentucky courts have applied "independent contractor" definitions to racing since 1980, when the Kentucky Court of Appeals held that neither Churchill Downs nor a trainer was liable for covering an injured jockey. The principle was later extended to freelance exercise riders. And trainers have applied it as well

to other freelance stable workers.

There's also no requirement that workers at horse farms be covered by workers' comp — though their jobs are arguably just as dangerous as those at tracks.

The farm and the track

Kentucky's workers' compensation statute specifically exempts "any person employed in agriculture," including farms that raise horses "for racing purposes."

Over the years, courts have interpreted that language as including breeding operations, farms that board thoroughbreds, and farms that rehabilitate injured racehorses.

The exemption draws a distinction between horse farms and racing stables — but in reality, the line between them is blurry. Horses often train on the farm and move back and forth from there to the track. And many backside workers also work on horse farms. For example, exercise riders at tracks also "break babies" — teach young horses how to be ridden — at farms.

Large operations often do cover farm workers, but most horse farms are small.

Gilbert said she thinks the law needs to be changed to guarantee coverage for both racing workers and horse farm workers.

"We protect every other worker in Kentucky, except these agricultural exceptions and a few other minor exceptions," she said. "I don't know that we have a valid reason for excluding the horse industry."

