



Liability Releases in Michigan Equine Activities: Why They Fail

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“Liability releases are not worth the paper on which they’re printed.”

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Some of our clients may say this, but the reality in Michigan is that liability releases have been enforced in recreational and equine-related activities. Still, these documents sometimes fail in legal challenges. This article explores liability releases in Michigan equestrian activities and themes in release-related litigation with an emphasis on equine liability.

BACKGROUND

The enforceability of liability releases generally comes from the basic principle of freedom of contract. Liability releases create a conflict between the right to contract and the right to seek recourse through the legal system. In *B & B Livery, Inc. v. Riehl*,¹ a case that involved the enforceability of a release signed by an equestrian before taking part in a ride, the Colorado Supreme Court explained: “[Releases] stand at the crossroads of two competing principles: freedom of contract and responsibility for damages caused by one’s own negligent acts.”² This inherent conflict might explain why liability waivers and releases are routinely subjected to intense scrutiny in legal challenges.

It is legal in Michigan for a party to contract against liability for damages caused by ordinary negligence through a release of liability. As the court explained in *Paterek v 6600, Ltd.*:³

We note initially that it is not contrary to this state’s public policy for a party to contract against liability for damages caused by ordinary negligence. . . . and cases cited therein. As with other contracts, the validity of a contract of release turns on the intent of the parties. . . . To be valid, a release must be fairly and knowingly made. . . . A release is not fairly made and is invalid if (1) the releasor was dazed, in shock, or under the influence

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of drugs, (2) the nature of the instrument was misrepresented, or (3) there was other fraudulent or overreaching conduct. . . .

186 Mich App at 448-449 (citations omitted).

In *Cole v Ladbroke Racing Michigan, Inc.*,⁴ the plaintiff signed the defendant track's "acknowledgment and assumption of risk form" which provided, in part, that "the undersigned hereby voluntarily assumes all risks of any injury that the undersigned may sustain while on the premises of Ladbroke and hereby waives all liability against Ladbroke, its officers, employees and agents." While the plaintiff was exercise riding a racehorse at the track, the horse allegedly spooked from a kite in a nearby tree and threw him, causing injuries. The Michigan Court of Appeals held that his case was properly dismissed based on the release.

In *Jones v The Flying Horseshoe Riding Ranch, Inc.*,⁵ the plaintiff, an experienced rider, signed the defendant stable's liability release and was assigned to ride a horse named "Bone Crusher" on a trail ride. During the ride, the horse allegedly threw the plaintiff and trampled her. The trial court dismissed the case on the basis of the release plaintiff had signed. Recognizing that it is not against public policy in Michigan for contracts to release liabil-

Editor's Note

Welcome to the second issue of the Newsletter for 2012.

We have several articles in this issue including the Newsletter's first article on equine law written by State Bar of Michigan President and Animal Law Section member, Julie Fershtman.

We continue to print the issue in all color including photographs and graphics. This greatly increases the visual appeal of the Newsletter.

My plan is to continue to publish the Newsletters more frequently. Another issue will be published in August with articles on the contributions of dogs in courtroom settings and pet trusts.

The August issue will include the nominations for the Animal Law Section Council. If you want to be nominated, let me know along with some information about your interests and background prior to July 15, 2012.

As always, please remember that this is your newsletter, too. Helpful articles are always needed. In fact, if I can get one good main article for each issue, I can do the rest. Please consider writing an article that will be of interest to your fellow Section members.

Donald Garlit, Newsletter Editor
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ity for damages caused by ordinary negligence, that the release was “clear and unambiguous,” and that the plaintiff made no claim that she did not read or understand the release, the Michigan Court of Appeals affirmed.

Similarly, in *Viau v Double JJ Resort Ranch, Inc.*,⁶ the plaintiff signed the defendant stable’s “Registration Card” and “Agreement Regarding Risk of Horseback Riding,” both of which contained release language. During her ride, the horse allegedly bucked and threw her. Through her lawsuit, she maintained that she did not intend to enter into a release, that she failed to read the exculpatory language before signing the documents, that she received no separate consideration for entering into the releases, and that the documents were unenforceable contracts of adhesion. Rejecting these arguments, and finding no evidence of misrepresentation and no allegations of gross negligence, the court enforced the releases and dismissed the case.

WHY THEY HAVE FAILED

Though faulty draftsmanship is occasionally cited as a reason why liability releases fail, no reported cases could be found from Michigan in which a court failed to enforce a liability release specifically for that reason in an equestrian setting. On the other hand, courts in Michigan have addressed that public policy prevents enforceability of releases when the documents attempt to relieve a party from liability for gross negligence or will-

ful and wanton misconduct and when the documents purport to waive claims of minor children. These grounds are discussed below.

Willful and Wanton Misconduct

It is against public policy in Michigan for a release to attempt to prevent liability for gross negligence or willful and wanton misconduct. *Xu v Gay*,⁷ *Burnett v City of Adrian*,⁸ *Lamp v Reynolds*.⁹ The Court in *Burnett v City of Adrian* defined “willful and wanton misconduct” as conduct that “requires an intent to harm or such indifference to whether harm results as to be the equivalent.” *Burnett v Adrian*.¹⁰

Not every equestrian case demonstrates the sufficiently egregious level of wrongdoing necessary to qualify as “gross negligence” or “willful and wanton misconduct.” In *Rivera v RP Gordon, Inc.*,¹² for example, this author defended a public riding stable that presented the plaintiff with a liability release before her ride. When the ride concluded, plaintiff was attempting to dismount while the defendant’s employee held the horse, but the employee became distracted, and plaintiff’s foot was caught in a stirrup. She fell and was injured. At issue was not necessarily the enforceability of the stable’s release – this was assumed as the plaintiff pled only the theory of “wanton and willful misconduct” that could not be released away by law – but

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rather whether the plaintiff raised a genuine issue of material fact for a claim of “willful and wanton misconduct.” The trial court dismissed the case, finding that plaintiff failed to present sufficient evidence to satisfy the requisite degree of misconduct, and the Court of Appeals affirmed.

Minors

Although not an equestrian liability case, *Woodman v Kera, LLC*,¹² involved the enforceability of a release signed by a parent on behalf of his or her minor child. This is a setting common to equine related activities, such as riding lesson facilities and summer camps. In *Woodman*, the defendant was a facility that provided inflatable child’s amusements, such as bounce devices and inflatable slides. A parent signed a defendant’s release when his child was a patron. While his child was playing on a slide at the facility, he jumped from the top of the slide and was injured. A majority of the Michigan Supreme Court held that the release could not defeat the minor child’s claims. Last year, in a likely response to *Woodman*, the Michigan legislature enacted a law permitting parents or legal guardians to sign releases involving “recreational activity” under limited circumstances.¹³

Equine Activity Liability Acts

Another issue is whether a release of liability can avoid liabilities for cases involving the enumerated exceptions in the Michigan Equine Activity Liability Act,¹⁴ such as the Act’s “faulty tack or equipment” exception.¹⁵ Since 46 states have passed some form

of equine activity liability act, a few jurisdictions have already considered the issue.¹⁶ Michigan addressed it in *Terrill v Stacy*.¹⁷ There, a riding stable required its customers, including the plaintiff, to sign a liability releases before taking part in a trail ride. The release provided, in part, that the defendant facility was being released “from any and all claims and demands of every kind, nature, and character.” Noting that the Act contained language holding that “[t]wo persons may agree in writing to a waiver of liability beyond the provisions of this act and such waiver shall be valid and binding by its terms,”¹⁸ the court held that the defendant’s release did not preserve liability under Act’s “faulty tack or equipment” exception. Accordingly, the Court of Appeals held that a release can avoid liabilities under the Act.

CONCLUSION

Counsel representing equine professionals, equine owners, and equine activity providers would be wise to explore the use of appropriate release documents in their activities. Also, because of the very real possibility that litigation can follow, even with a properly worded and signed release, appropriate liability insurance is a must. 🐾

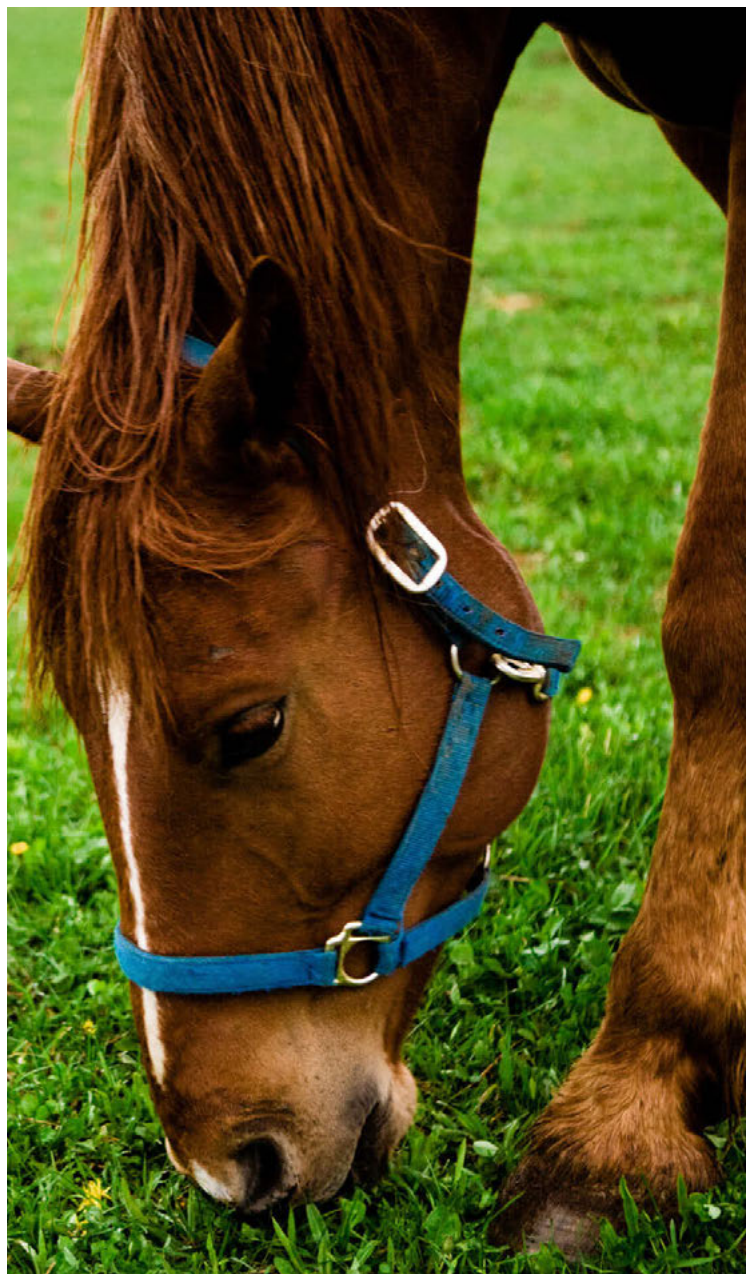
ABOUT THE AUTHOR

Julie I. Fershtman is a Shareholder with Foster Swift Collins & Smith, PC, in Farmington Hills, Michigan, where her practice focuses on insurance law, commercial litigation, and equine law. She is the 2011-2012 President of the State Bar of Michigan and a Vice-Chair of the ABA/TIPS Animal Law Committee. She is the author of two books on Equine Law and co-author and co-editor of the ABA book *Litigating Animal Law Disputes: A Complete Guide for Lawyers*. (*Editor’s Note:* Julie is a member of the Animal Law Section of the State Bar of Michigan.)

ENDNOTES

1. 960 P2d 134 (Colo. 1998).
2. *Id.*, at 136.
3. 186 Mich App 445; 465 NW2d 342 (1990).
4. 241 Mich App 1; 614 NW2d 169 (2000).
5. No. 177785 (Mich App 1995)(unpublished).

6. No. 1:90-CV989 (WD Mich 1991)(unpublished).
7. *Xu v Gay*, 257 Mich App 263, 269; 668 NW2d 166, 170 (2003).
8. 414 Mich 448; 326 NW2d 810 (1982).
9. 249 Mich App 591, 594; 645 NW2d 311 (2002).
10. 414 Mich 448, 455; 326 NW2d 810 (1982).
11. No. 246687, 2004 WL 1109153 (Mich. App. 5/18/2004)(unpublished).
12. 486 Mich 228; 785 NW2d 1 (2010).
13. In an apparent reaction to *Woodman*, the legislature in 2011 enacted MCL § 700.5109, which provides that a minor's parent or guardian may release a person (non-governmental and nonprofit) from liability for economic or non-economic damages for personal injury sustained by the minor during a "recreational activity" for which the release is provided.
14. MCL § 691.1661, et seq.
15. MCL §691.1665(a).
16. *Raveson v Walt Disney World*, 793 So2d 1171 (Fla App 2001); *Street v Darwin Ranch*, 75 FSupp2d 1296 (D Wyoming 1999); *Be&B Livery, Inc v Riehl*, 960 P2d 134, 136 (Colo. 1998)(holding that releases could override exceptions in the Florida EALA). Cf, *Teles v. Big Rock Stables*, 419 FSupp2d 1003 (ED Tenn 2006)(holding that release was unenforceable against a claim for violation of the Tennessee Equine Activity Liability Act's "faulty tack or equipment" exception).
17. No. 265638; 2006 WL 473799 (Mich App 2/28/2006).
18. MCL §691.1664(2).



Tip from the SBM Practice Management Resource Center

Save Time Printing Labels

Randall Ryder, writing for Lawyerist.com, makes an excellent case for investing in a Dymo LabelWriter 450 Twin Turbo Printer. These handy label printers can be used in a variety of ways to increase the efficiency in your office. The 450 Twin Turbo prints both address labels and postage labels. There are a lot of uses for these handy little printers. Some offices have a label printer set up to print appointment reminder labels—print a label with the date and time of the client's next appointment, stick it on the back of a business card and give it to the client as the appointment reminder. Having a quick way to create file labels will increase the likelihood that files are properly labeled as they are created. The ROI is measured in efficiency and saves your regular printer from damage when label printing goes bad.

Animal Law Symposium at Thomas M. Cooley Law School—February 18, 2012

By Renee Edmondson

Ms. Bee Friedlander, founding member of the Animal Law Section within the State Bar of Michigan and managing director of the Animals and Society Institute, began the symposium by addressing the correlation between animal abuse and domestic violence. In cases of domestic violence there is often abuse against the pets as well. Ms. Friedlander described programs that have been designed to break the cycle of violence against animals and humans. AniCare was the first professionally developed psychological treatment model designed to assess and treat animal abusers over the age of 17. This program uses a cognitive-behavioral approach with direct interventions emphasizing the patient's need to take responsibility for the behavior. The second program, AniCare Child, is similar to Anicare but it is designed for animal abusers under the age of 17 and uses techniques and methods specifically designed for children. To conclude her presentation, Ms. Friedlander mentioned the presentation of a new bill to the Michigan House of Representatives. This bill would create an animal abuser registry system which would allow law

enforcement officials to track habitual offenders. The registry would also enable shelters, rescues and breeders to perform a search on a potential adopter to ensure the animal is going to a safe home.

Mrs. Eileen Liska, former lobbyist for the Michigan Humane Society, elaborated on the importance of lobbying for change. Mrs. Liska explained in detail the lobbying process and how to become involved as a private citizen. She described her experiences working with state and federal Senators and Representatives from Michigan. She also touched on the connections and friendships she was able to build with high profile figures in the animal welfare movement. All in all, her work on a variety of legislative measures has made Michigan a safer place for animals.

Mr. Raj Prasad, assistant prosecutor for Wayne County, Michigan and founder of its Animal Protection Unit spoke of his experiences with animal related crimes he has encountered in Detroit, Michigan. Typically he prosecutes three categories of animal related crimes. First, Mr. Prasad discussed the intentional acts

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PHOTOS FROM THE SYMPOSIUM

1. Symposium organizers and Cooley Animal Law Society members with Moderator (L-R): Paul Martin (Secretary), Danielle Dawson (co-founder and co-President), Renee Edmondson (co-founder and co-President), Chris Bruno (Treasurer), and Ginny Mikita (Moderator)
2. Dr. James Bader, DVM spoke on providing veterinary services to dogs and cats in Guatemala
3. Speaker's Table with Beth Wickwire and Raj Prasad
4. Speaker (and Animal Law Section member) Raj Prasad discussed Prosecuting Animal Related Crimes
5. Moderator (and Animal Law Section member) Ginny Mikita led the Symposium
6. Speaker (and Animal Law Section member) Beth Wickwire discussed a legal action to help rescue pit bulls
7. Eileen Liska spoke on Lobbying for Change
8. Symposium setting and view of some attendees

Photos courtesy of members of the Animal Law Society of Thomas M. Cooley Law School.



Symposium . . . continued from page 6

of cruelty he has prosecuted and some of the obstacles he has faced. It is unfortunate, but not all officers of the legal system believe animal cruelty is a serious crime. Mr. Prasad has been required to be creative in terms of the charges and punishments he seeks. In all intentional cruelty cases he requires mental evaluation and counseling for the offenders. He hopes that the required mental counseling will lead to a prolonged sentence and deter offenders from repeating the crime. The second most common type of animal related crime is animal fighting. It is no secret that Detroit, Michigan has an increased problem with dog fighting. In an effort to combat dog fighting, Mr. Prasad offers free training courses to police departments and investigative units in Detroit and its surrounding areas. He explains the different types of evidence that enforcement agencies should look for when breaking up a dog or cock fight and how this evidence is used against offenders. This program will help build stronger cases against those who choose to participate in animal fighting. The last form of animal related crimes that is common to Mr. Prasad is the practice of animal hoarding. Again, Mr. Prasad requires mental evaluation and counseling for each offender. Mental counseling is perhaps the best method to combat hoarding and hopefully prevent future instances.

Mrs. Beth Wickwire, an Attorney-Counselor and Judicial Clerkship Advisor for the University of Michigan shared her experience in working with the Monroe

County Animal Control in the case regarding the “MC Quad”. The “MC Quad” was a group of four pit-bull mixed breed dogs who were found after a dog fight had been broken up on a property located in Monroe County, Michigan. The dogs were chained at the back of the premises and had been found by a member of a local rescue organization after investigators had left the scene. The dogs were taken to Monroe County Animal Control. This ultimately led to an extensive court battle between the rescue organization that found the dogs and the Monroe County Animal Control. Because the dogs were pit bulls mixed dogs and because they had been found at the scene of a dog fight, the county wanted to euthanize them. The rescue organization fought to have the lives of the dogs spared because they showed no signs of aggression, fighting or trauma associated with fighting. Both parties had the dogs evaluated by canine behaviorists and after nearly nine months of litigation the dogs were spared and released to the rescue organization where they are happily awaiting adoption.

Dr. James Bader, a veterinarian from Holland, Michigan shared his experiences in helping dogs and cats in Guatemala. Dr. Bader has made multiple trips to Guatemala to conduct a mobile veterinary care service for local families who would otherwise not be able to afford veterinary care for their pets. He recognized the need for these services while on a trip with his family. He has been traveling to Guatemala multiple times a

Author’s Note: The Cooley Animal Law Society was founded by Renee Edmondson and Danielle Corteville Dawson in May of 2011. The two classmates found out their joint love of animals when Renee briefed a dog bite case in their Torts II class. The two began talking about forming a group and the idea of the Animal Law Society was born. The current officers include: Renee Edmondson and Danielle Corteville Dawson, co-founders and co-presidents; Paul Martin, secretary; and Chris Bruno, treasurer.

The Animal Law Society is at Cooley’s Grand Rapids campus. The Society currently has about 25 active members. It has done numerous events, even though it is still a young group. These events include a holiday pet drive, an Animal Law Symposium, and volunteering for the Bissel Blocktail Party, which benefitted the West Michigan Humane Society.

Future events include another Animal Law Symposium and the project “Puppies and Law Students” where area animal organizations will bring in their puppies and dogs for law students to play with and de-stress before exams. The Animal Law Society is dedicated to providing a forum for education and advocacy aimed at protecting the lives and advancing the interests of animals through the legal system, and raising the profile of the field of animal law.

The Animal Law Society
of Thomas M. Cooley Law School – Grand Rapids

Cordially invites you to attend its Animal Law Symposium
Saturday, June 23, 2012

Thomas M. Cooley Law School
111 Commerce Avenue
Grand Rapids, Michigan 49503

Speakers for this event include:

- **Mr. JP Goodwin**, Director of Animal Cruelty Policy, Humane Society of the United States
- **Mr. Jim Knorr**, Retired USDA Special Agent, Lead Investigator of the Michael Vick case
- **Mr. Raj Prasad**, Assistant Wayne County Prosecutor, founder of the Animal Protection Unit
- **Representative Harvey Santana**, Michigan House of Representatives, and sponsor of the current Animal Abuser Registry legislation

Topics include:

The Michael Vick investigation, the prosecution, investigation, eradication of dog fighting, and current Michigan legislation regarding animals.

Agenda for the Day

10:30-11:30 a.m. Mr. Jim Knorr
11:30-12:30 p.m. Representative Harvey Santana
12:30-1:30 p.m. Lunch (will be provided)
1:30-2:30 p.m. Mr. JP Goodwin
2:30-3:30 p.m. Mr. Raj Prasad

\$20.00 for Guests - \$5.00 for Students and Faculty (cash or check accepted at the door)

Light refreshments and lunch will be provided

Please **RSVP** to Renée Edmondson: EdmondsR@cooley.edu **by June 8, 2012**

NOTE: RSVP Date will be held open until June 15 for Animal Law Section Members





STATE BAR OF MICHIGAN



ANIMAL LAW SECTION

Treasurer's Report



Treasurer's Report for 2012 Fiscal Year (FY)

This is a summary of the Animal Law Section's financial status as of 30 April 2012, seven months into our current fiscal year. The purpose of this summary is to assure the members that the Animal Law Section is operating with an eye towards maintaining a sound financial status, and that your Section dues are being spent responsibly.

Present membership is 183, a number representing a 5% increase over last year's membership. Membership has grown for the past two years, following a slight dip in FY 2009.

Expenses continue to be limited, being comprised of monthly expenses – teleconference calls, website/listserv – and periodic expenses such as the Legislative Aides lunch, Annual Meeting expenses, and the costs associated with our various awards. Additional forthcoming expenses include our annual symposium, which in a break from past practice will be held in October of this year, instead of in the spring, and the costs of printing for this current edition of the Newsletter.

The Section's fund balance as of 30 April 2012 was \$15,091, an increase of \$2,660 from the balance at the start of the present fiscal year. Do keep in mind that we have yet to incur such customary and significant expenses for our Symposium and for this second Newsletter publication, but based upon data from past years I would anticipate an ending fund balance will again be greater than our starting fund balance for this fiscal year.

In my years of involvement with the Section, I have been consistently impressed with our frugality. I continue to hold this belief in my role as treasurer; seeing the raw numbers that are forwarded to me from the State Bar each month really makes clear how well we have managed our finances over the years. While frugality is undoubtedly an admirable trait for a section to be able to so consistently demonstrate, the Section does not exist simply to grow a fund balance, and I wonder whether we could be doing more things for the benefit of our members with the money we have available to us. On behalf of the Section's officers and council members, I would pose the following question to you, our members: is there more that *you* would like to see us doing with our funds? I'm open to suggestions here, so if there is, please let me know and I will gladly raise the issue for discussion at our next meeting. I can be reached best by email at brandon.m.scott@gmail.com.

Respectfully Submitted,

Brandon Scott
May 2012



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to Bar Members

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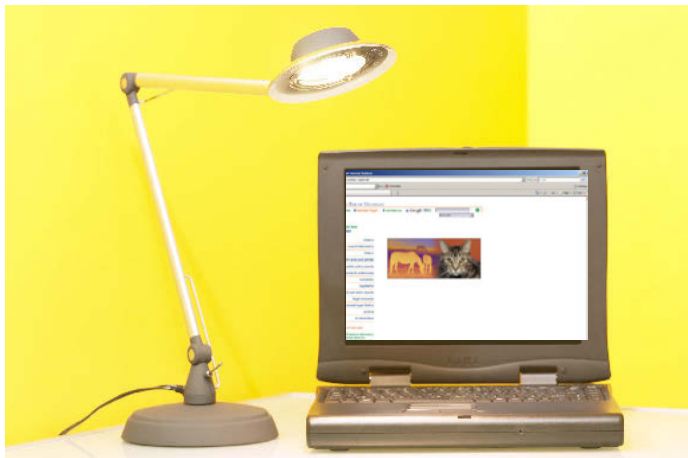
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Upcoming Events

Saturday, June 23, 2012

Animal Law Symposium sponsored by the Animal Law Society of Thomas M. Cooley Law School – Grand Rapids (more details within Newsletter)

July 26, August 9, and August 23, 2012

(different location each date):
Animal Law Conference of Pennsylvania Bar Institute (see www.pbi.org)

September 19-21, 2012

State Bar of Michigan Annual Meeting in Grand Rapids

Friday, September 21, 2012

1:30 – 3:30 PM: Annual Animal Law Section Meeting in Grand Rapids during SBM Annual Meeting

Friday, October 19, 2012

Animal Law Section Symposium in Lansing (more details as they are finalized)

