

# MASSACHUSETTS LAWYERS WEEKLY

February 23, 1998

www.masslawyersweekly.com

## VERDICTS & SETTLEMENTS

### Workers' Compensation

#### Jockey As Independent Contractor Or Employee

##### **\$295,517 Settlement**

The claimant, a jockey, was 23 on March 1, 1986 when he rode the insured's horse in the first race at Suffolk Downs. The claimant sustained a spinal injury when he was thrown from his mount. He asserted he was an employee entitled to workers' compensation benefits for his injuries that occurred during the course of his employment. At the time this matter was settled, there was no Massachusetts appellate decision finding a jockey to be an employee. (There was one Superior Court decision favorable to the claimant). Other state appellate courts were split on the issue whether a jockey is an independent contractor or an employee.

In November 1985, the claimant, who had raced at other racetracks throughout the country, came to Suffolk Downs where he was introduced by a third party to the insured. The claimant reported to the insured's barn every day to exercise the insured's horses and perform other tasks. In the afternoon, he would race horses for other owners as well as for the insured. The claimant received no wages from the insured and only received monies for racing. Racing compensation was received from different owners including the in-

sured (who deposited monies in a Horseman's Account pursuant to state regulations).

The claimant asserted that he had a "first call" arrangement with the insured and was subject to his control under the re-statement cited in the MacTavish decision. The insurer claimed that the claimant was an independent contractor who was free to ride for other owners at Suffolk and elsewhere; was not subject to the direction and control of the insured, especially when racing and, in particular, at the time he was injured during a race.

On Aug. 11, 1986, Administrative Law Judge James McGuinness directed the insurer to pay the claimant compensation at a rate of \$360.50 per week. On July 29, 1989 and after two days of hearings, Administrative Law Judge Louis Gallo vacated Judge McGuinness' order and terminated weekly benefits. The matter was appealed to the Reviewing Board which on Feb. 14, 1994 set aside Judge Gallo's decision and recommitted the case for reassignment. The Reviewing Board's decision was appealed by the insurer to the Appeals Court. On Jan. 26, 1995 the Appeals Court denied the interlocutory appeal. Four days of hearings were held before Administrative Law Judge Douglas Bean on April 13, 14; May 15 and 16, 1995.

LAW OFFICE OF KENNETH I. KOLPAN, P.C.  
100 Summer Street  
Boston, MA 02110  
617-426-2558

For more info on brain injury litigation, visit  
[www.kolpan.com](http://www.kolpan.com)  
or Email: [kolpan@tiac.net](mailto:kolpan@tiac.net)

The matter was settled after a full day's mediation before James V. Ryan, a former judge of the Division of Industrial Accidents. The matter was settled by the parties on a non-accepted basis in the amount of a lump sum of \$240,000 plus waiver of the paid weekly benefits of \$55,517 for a total settlement of \$295,517.

##### **Injuries alleged:**

Spinal injury

##### **Name of case:**

Withheld

##### **Court/case #:**

Withheld

##### **Tried before judge or jury:**

Mediation after four-day trial and prior to judge's decision

##### **Name of judge:**

Douglas Bean

##### **Amount of settlement:**

\$295,517 including weekly payments

##### **Date:**

March 22, 1996

##### **Insurance carrier:**

Withheld

##### **Attorneys for plaintiff:**

Kenneth I. Kolpan, Michael D'Avolio, Steven Smoot and Anthony DiNatale, all of Boston

##### **Attorney for defendant:**

Withheld