

EQUINE INSURANCE UPDATES

**PREPARED BY:
PETA PARNELL, NOEL RILEY & ASSOCIATES**



FOR NSWROA MEMBERS



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INTRODUCTION

Noel Riley & Associates are a firm of Chartered Loss Adjusters who specialise in the area of Bloodstock and Livestock insurance claims.

Over the past 19 years, Noel Riley and his daughter Peta Parnell, have worked with Insurers, owners, trainers and veterinarians throughout Australia and overseas.

They have shared their knowledge and experience, writing articles for and presenting papers to peak industry bodies.

In this update Peta Parnell will address some of the issues faced in Bloodstock Mortality Insurance, with a view to raising awareness and opening up a discussion on the topic.



CHAPTER 1

Notification to Insurers

The great majority of horses insured in Australia are insured under the Lloyd's Equine Policy. It is a condition of the Policy that in the event of ***“any illness, disease, lameness, injury, accident or physical disability whatsoever”*** the Insured (normally the horse owner) will ***“immediately”*** notify the Insurer's representative, who, if considered necessary, will instruct a veterinarian on behalf of the Insurer. It is the Insured's responsibility to notify the Insurer's representative, not the veterinarian's or trainer's.

However, with a view to helping their clients and possibly avoiding disputation, veterinarians, trainers and farm managers are encouraged to enquire whether a horse is insured and when it is, to instruct their clients to notify the Insurer.

Clearly, if the Insurer is not informed of the problem, its representative can not make the necessary enquiries and, where considered necessary, can not appoint a veterinarian on behalf of the Insurer, which can result in disputation after the event and in some circumstances, may even result in the reduction or denial of a claim. Insurers will want to ensure that an insured horse receives appropriate veterinary treatment and if it is not notified of a problem at the time, it becomes necessary to scrutinise the treatment history and veterinary records of the horse, which can be time consuming for all involved.

When a veterinarian is appointed on behalf of the Insurer, he/she will liaise with the Insured's veterinarian on the treatment being administered and can satisfy the Insurer that the treatment is appropriate. Often, the veterinarian appointed by the Insurer is a specialist in their field, whose knowledge and experience can only benefit the prognosis of the horse.

It is also not uncommon for a veterinarian to be initially appointed, to diagnose the condition and to prescribe treatment, and not be consulted on the progress of the horse or its on-going or future treatment. When the Insurer's representative is notified, he/she will regularly follow-up the person in possession of the horse or the veterinarian, ensuring that appropriate treatment continues.

Notifying the Insurers of an injury or illness to your horse, no matter how small, does not mean a ***“black mark against your name”***. It can avoid problems down the track in the event that the condition worsens or a claim is submitted.

Always ensure that the people in charge of the care of your horse are aware if the horse is insured.

CHAPTER 2

Fundamentals of Insurance

For this article, I thought I'd comment on some general insurance principals that impact on Equine Insurance.

The fundamental principal of insurance is to share the loss of a few, amongst many. The premiums charged for insurance create a pool from which claims are paid. A common comment made to people in the insurance industry is ***"I've never made a claim, why should I have insurance?"*** The fact is that if everyone who took out an insurance policy claimed on the policy, there would be no pool available to pay the claims. Hopefully, what most people purchase when purchasing insurance, is security and peace of mind.

An insurance Policy is a legally enforceable contract between the Insured and the Insurer. It is termed a ***"contract of the utmost good faith."*** The Insured is required to, in the utmost good faith, provide the material facts the Insurer relies upon when deciding whether or not to offer the Insurance and if so on what terms. In Equine Insurance, this is usually the Proposal and Certificate of Examination for Mortality Insurance Purposes or Declaration of Health. In response, the Insurer is required to act with the utmost good faith in its dealings with the Insured and to honour the terms and conditions of the Policy. In Australia these principals are governed by the Insurance Contracts Act 1984.

The Policy sets out the property insured, the geographic limits, the insured perils, the Exclusions and the Conditions that both the Insured and the Insurer agree to comply with.

In exchange for the premium, the Insurer undertakes to indemnify the Insured for specified losses. The principal of indemnity is to place the Insured in the same financial position after a loss, as the Insured was in prior to the loss. Many property policies give the Insurer the option of

reinstating the property, replacing the property, or paying the Insured the value of the property, up to the Limit of Liability commonly called the sum insured. In horse mortality insurance, the Insurer undertakes to indemnify the Insured for the **“fair market value”** of the horse at the time of the loss, again up to the Limit of Liability, or occasionally for an **“agreed value”**.

In some circumstances, often not intentional, the Insured may be entitled to claim against two policies. In such cases Contribution applies. Contribution is the right one Insurer has, after it has indemnified the Insured, to claim in the name of the Insured against the second policy. Historically, some Insurers sought to apportion the loss prior to indemnifying the Insured and to only pay the Insured their calculated portion of the loss. The Insurance Contracts Act renders this practice void and provides for the Insured to select the policy to claim against and, after indemnifying the Insured, the Insurer of that policy can claim Contribution from the second Insurer.

Subrogation is the right an Insurer has, after it has indemnified an insured loss, to pursue recovery of the amount paid in settlement of the claim from any party that negligently caused the loss. Professionals, such as Doctors, Accountants, Veterinarians, etc., can purchase Professional Indemnity Insurance to indemnify them in the event of them being found to have negligently caused or contributed to a loss. Trainers and Agistment Farms can purchase similar protection through specialised liability policies such as Care, Custody & Control and Public & Products Liability Policies.

Chapter 3

Bloodstock Insurance Summary

In this article I would like to briefly summarise some of the more significant issues.

The Policy: The most common Equine Insurance Policy issued in Australia is the Lloyd's policy, which in its basic form covers the death of the insured horse. However, the cover provided for humane destruction is limited to situations where a Veterinarian first certifies that the suffering of the horse is incurable and so excessive that immediate destruction is imperative for humane reasons. In the case of an injury, the Policy provides for the horse to be destroyed, where necessary, without waiting for the appointment of a Veterinarian by the Insurer, but in the case of an illness, the policy requires the Veterinarian to be appointed by the Insurer.

Clearly, there are many situations where humane destruction is considered appropriate that do not satisfy the policy criteria.

The Certificate: The Certificate of Examination for Mortality Insurance Purposes is issued by the Veterinarian to his client, invariably the horse owner or the horse owner's agent. An Insurer will rely on the information on the certificate to decide whether or not to insure the horse and if so on what terms. There can therefore be consequences if the information on the certificate does not accurately detail the horse's condition.

In some cases, the Insurer may require a Declaration of Health from the Insured, or representative of the Insured such as the trainer or agistor. As with the Certificate of Examination for Mortality Insurance Purposes, the Insurer relies on the information in the Declaration in deciding whether or not to insure the horse and if so, on what terms.

Notification: Like all insurance policies, the Equine Insurance Policy requires the Insured to immediately notify the Insurer in the event of a loss, or in the event of circumstances that may give rise to a loss, e.g. accident, illness, lameness, physical disability of any kind. It is important that the Insured err on the side of caution and notify the Insurer of any problem with an insured horse, no matter how small. It can avoid disputes and aggravation later if the Insurer is notified of a problem at the outset. It also provides the Insurer with the opportunity to appoint a Veterinarian on their behalf, if they deem necessary.

Post Mortem Examinations: In the case of the death or humane destruction of an insured horse the policy requires a post mortem examination to be carried out by a Veterinarian at the expense of the Insured and for the Insured to submit a post mortem report to Insurer. It also provides for the Insurer to be given the opportunity to have a post mortem examination carried out by a Veterinarian of the Insurer's choice, in that case at the Insurer's expense.

Claim Form: A Claim Form will usually be sent to the Insured for completion. The information contained in the Claim Form helps form the basis on which the Insurers consider the claim.

CHAPTER 4

Mortality Insurance and Humane Destruction

One of the most common areas of confusion and conflict between owners and insurance companies in equine insurance is whether the condition of the horse satisfies the Policy criteria for humane destruction. It should be stated from the outset that an Insurer will never prevent an owner from euthanasing their horse, but the death of the horse will not automatically give rise to a recoverable insurance claim.

Majority of horses insured in Australia are insured through a local broker and underwritten by Lloyd's of London. The most common Policy issued in Australia is the Lloyd's LE (Australia) Equine Policy, which was introduced in 1997. The LE Policy specifically covers Humane Destruction and defined it in terms that require certain criteria are met.

“HUMANE DESTRUCTION means:

- a) that the HORSE incurs an injury or is afflicted with an excessively painful disease, and a VETERINARIAN appointed by the Underwriters shall first have given a certificate that the suffering of the HORSE is incurable and so excessive that immediate destruction is imperative for humane reasons; or***

- b) that the HORSE incurs an injury and a VETERINARIAN appointed by the INSURED shall first have given a certificate that the suffering of the HORSE is incurable and so excessive that immediate destruction is imperative for humane reasons without waiting for the appointment of a VETERINARIAN by the Underwriters.”***

There are many scenarios where humane destruction is appropriate that do not give rise to recoverable insurance claims. Considerations such as the quality of life the horse will have after the injury/surgery and commercial considerations such as the financial cost of treatment and ongoing care for a horse that may ever race again, can lead to owners deciding to euthanase a horse. This alone does not provide justification for a recoverable insurance claim.

There is also a significant difference between the cover provided by the Equine Policy for Humane Destruction and the Guidelines For Euthanasia of Horses published by Equine Veterinarians Australia and many of the Equine Veterinary Associations throughout the world. Without going into specific circumstances, the principal difference is that the Equine Policy requires the ***“suffering of the HORSE to be incurable and so excessive that immediate destruction is imperative for humane reasons”***.

It is therefore imperative that, where possible, you contact the person nominated in your insurance Policy before making your decision regarding euthanasia of your horse.

Chapter 5

Insurance for Wobbler Syndrome

As discussed in a previous chapter, the Lloyd's LE (Australia) Policy is the common Policy issued to cover horses in Australia. It provides cover for death or humane destruction, with humane destruction requiring a veterinarian to first certify that the suffering of the horse is *"incurable and so excessive that immediate destruction is imperative for humane reasons"*. It is a mortality policy.

Having said that, numerous endorsements are available, and it is rare to see a Policy issued that has not been endorsed to cover Wobbler Syndrome.

The endorsement defines Wobbler Syndrome as:

"HORSE is suffering from cervical vertebral malformation and/or spinal cord compression and/or cervical vertebral myelopathy"

The endorsement requires the horse to be *"a minimum level of Grade 3"* ataxic in accordance with the following scale:

"0 = Neurologically normal.

1 = Neurological defects barely detectable at normal gaits; exacerbated by excitatory tests.

2 = Neurological defects readily seen at walk.

3 = Neurologically worse defects and a HORSE may stumble or fall with manipulation.

4 = HORSE may fall at normal gaits

5 = Recumbent"

Further, the endorsement requires the condition *“to be chronic and progressive in nature”* and the diagnosis to be supported by *“radiographic and/or myelographic evidence”*.

There are numerous instances where the above wording is not satisfied. Some horses may have radiographic evidence of spinal cord compressive lesions, however their neurological deficits are defined only as grade 1 or 2. Further, a horse may have severe neurological deficits of grade 3 or 4, but have no evidence of spinal cord compression or cervical vertebral malformation.

Insured horses satisfying the foregoing criteria are invariably destroyed for humane reasons. Where Insurers are consulted prior to a myelogram being performed, permission is often obtained for the horse not to be revived from the anaesthetic, if the myelogram confirms the diagnosis. However, the Wobbler Syndrome Endorsement does not require the horse to be destroyed. Instead, it provides for the Insurer to be given undisputed ownership of the Insured's interest in the horse if so desired.

There are a number of reported cases of Insurers having paid claims for horses suffering from wobbler syndrome and the horse having gone on to become a successful sire. There is even one reported case of a horse having gone on to become a champion racehorse and sire. We reported on a claim where one of the owners of the horse did not have his interest insured and that owner would not consent to the destruction of the horse. The horse was therefore sold at auction with the disclosure that it had been diagnosed with Wobbler Syndrome. That horse has stood at stud covering nearly 500 mares in the first five years.

CHAPTER 6

Treatment by Non Veterinarians

Insurers do not want anyone other than registered veterinarians treating insured horses. The Lloyd's Equine Insurance Policy is quite specific in this area. Condition 7 a) of the Policy requires the Insured to immediately engage a veterinarian *"in the event of any illness, disease, lameness, injury, accident or physical disability whatsoever of or to the HORSE"*. Failure to immediately engage a veterinarian can prejudice an Insured's claim.

Further, Policy Exclusion 2 b) specifically excludes the death of a horse caused or contributed to by *"the giving of any medication unless by a VETERINARIAN (or experienced personnel directed by him) and certified by that VETERINARIAN to have been of a preventative nature or necessitated by accident, injury, illness or disease occurring during the period of insurance. As used in this insurance, medication includes any drug, hormone, vitamin, protein or other substance other than unadulterated food or drink"*.

In addition, Policy Exclusion 2 d) specifically excludes death caused or contributed to by the *"failure of the INSURED, his family, representatives, agents, employees, bailees or other persons who have care, custody or control of the HORSE to provide proper care and attention to the HORSE at all times"*. Clearly, this would include trainers, stud farm personnel, grooms, etc. The failure to appoint a veterinarian to treat a sick or injured horse could be regarded as a failure to provide proper care and attention.

We have previously been appointed in connection with two claims for the deaths of horses immediately following injections by trainers. In one case Hip Iron was injected and in the other a mixture of vitamins and electrolytes. Hip Iron is known to cause anaphylaxis in some horses and the label contains a warning to that effect. In the case of the latter, it has

been suggested that the trainer inadvertently injected the vitamin supplements into the carotid artery instead of the jugular vein.

We have also been appointed in connection with a claim where an artificial insemination technician is thought to have torn the rectum of a horse whilst performing a rectal pregnancy examination. Another claim involved a horse spelling at a trainer's property. It sustained a wound to a hind fetlock, which was treated by stud staff using drugs they had on hand. When the affected leg developed cellulitis a week later, it was taken to a vet clinic and found to have a severely infected fetlock joint, necessitating its euthanasia.

Underwriters have denied liability for all four of the above claims.

It is not the purpose of this article to disparage trainers or Agistment farms. However, there is clearly a tendency on the part of some "*would be horse experts*" to treat horses themselves. Indeed the supply of restricted drugs to non veterinarians has long been an industry problem. It could only benefit horse owners if they are aware of the potential pitfalls in allowing non-veterinarians to treat their horses, particularly insured horses, rather than immediately engaging a veterinarian to treat the horse.

Noel Riley & Associates are not veterinarians or solicitors and as such this article is not intended to provide veterinary or legal advice.