

## November 23, 2010 - - M&H Wins Dismissal of Negligence Action

Stanislav v. Papp, --- N.Y.S.2d ---- (1st Dept., 2010)

In this negligence action to recover for personal injuries, the First Department, in accord with M&H's contentions, affirmed the dismissal of the action and upheld the lower court's decision to grant Defendant's motion for summary judgment. The Court determined that Plaintiff had failed to establish that Defendant owed her a duty, thereby finding he was not liable for her injuries. Further, in agreement with M&H, the Court concluded that any risk that contributed to her injuries was known and assumed by Plaintiff, and was not increased by the conduct of Defendant.

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<b>Stanislav v Papp</b>
2010 NY Slip Op 08620 [--- N.Y.S.2d ----]
Decided on November 23, 2010
Appellate Division, First Department
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This opinion is uncorrected and subject to revision before publication in the Official Reports.

Order, Supreme Court, New York County (Walter B. Tolub, J.), entered September 10, 2009, which granted defendant Papp's motion for summary judgment dismissing the complaint, unanimously affirmed, without costs.

Plaintiff was injured when she fell off a horse while on a date with defendant. She alleges that defendant was negligent in failing to properly warn her and appreciate her limited level of skill as a rider, and in failing to pay proper attention to her request that the horses proceed at a slow pace in a careful manner.

A finding of negligence may be based only upon a breach of a duty (*see Darby v Compagnie Natl. Air France*, 96 NY2d 343, 347 [2001]). Plaintiff has provided no evidence or authority which supports her contention that defendant owed her a duty to insure that the horseback riding experience was safe. As a person with experience riding horses, plaintiff was aware that the risks of falling from a horse or a horse acting in an unintended manner are inherent in the sport (*see Kirkland v Hall*, 38 AD3d 497, 498 [2007]; *Kinara v Jamaica Bay Riding Academy, Inc.*, 11 AD3d 588 [2004]; *Freskos v City of New York*, 243 AD2d 364 [1997]; *Dalton v Adirondack Saddle Tours, Inc.*, 40 AD3d 1169, 1171 [2007]). Defendant's conduct was not so unique or reckless as to create an additional unanticipated risk for plaintiff.