**Jockey Safety and the HISA: Educating Jockeys about HISA Regulations and Resources and how Invictus Underwriters is Lowering Insurance Costs for Top Operators**

**Background**

The federal Horseracing Integrity and Safety Act (HISA) was passed into law in December of 2020. Its promoters promised that HISA is “going to usher in a new era of uniformity, safety and integrity that’s going to make sure American thoroughbred racing has a prosperous future.”[[1]](#footnote-1)

HISA was not without its critics, some of whom said they wanted more meaningful dialogue and more reasonable regulations, which they felt the industry could afford and said might be more palatable to those who wanted to maintain the status quo.

One legal issue advocated by the National Horsemen’s Benevolent and Protective Association was that the law *unconstitutionally* gave too much power to a nongovernmental authority (Horseracing Integrity and Safety Authority, the “Authority”) and little to the Federal Trade Commission (FTC). On November 18, 2022, the U.S. Fifth Circuit Court of Appeals agreed, holding that HISA was unconstitutional.

However, that was far from the end of the battle. Congress reacted, changing the act in December 2022 to fix the problem highlighted by the Fifth Circuit as part of a $1.7 trillion spending package to keep the government funded. President Biden signed the package, including the revisions to HISA, on December 29, 2022. Litigation is expected to continue but, for now, HISA seems to be the law of the land (again) with the FTC on January 3, 2023, issuing an order that ratifies its previous orders regarding the rules issued by Authority. In the wake of this legislative fix HISA and the FTC filed their motions, arguing the new legislation addressed the Court's constitutional concerns. The Court rejected these arguments and issued its Mandate to the District Court for the Northern District of Texas for further proceedings.[[2]](#footnote-2)

The Sixth Circuit Court of Appeals heard oral arguments in December 2022 on similar constitutional changes to the Act and has asked the parties for supplemental briefing "addressing the recent amendments to the (Act) including whether the private delegation claims are now moot." Depending on the outcome, the cases may end up in front of the US Supreme Court.[[3]](#footnote-3)

**What’s Happening Today**

Despite litigation, the Authority recently announced on Twitter that it is looking to add a Horsemen & Jockey Support Specialist to its team to “help educate horsemen and jockeys on HISA’s regulations and aid in accessing resources on HISA system.”[[4]](#footnote-4)

Although somewhat nebulous, the job description is as follows:

* Owning the resolution of a user’s issue.
* Educating users on how to use the system.
* Educating users on HISA regulations.
* Prioritize, Filter and Route user communications.
* Travel to Racetracks, Training Tracks and Auction Facilities.

The hiring of this position suggests that the Authority will be taking two important steps as it relates to jockey safety: first, **educating** jockeys on what is required under HISA; and second, eventually **enforcing** HISA regulations against racetracks and jockeys alike. These are significant steps, and I will spend time discussing them below and the actions that track owners should consider from a risk and insurance perspective, and how Invictus Underwriters can help.

**Jockey Education**

HISA section 2190 – 2200 outlines the requirements for Jockey Health and Specific Rules and Requirements of Racetrack Safety. 2190-2192 addresses jockey health, jockey drug and alcohol testing, concussion management and insurance. Although a State Racing Commission may not elect to enter into agreement with the Authority, racetracks shall “develop and implement a testing program for drugs and alcohol use by jockeys, a compliant concussion management program, and insurance.” In conjunction with this is the training of veterinarians in regard to the health of horses, and prohibited practices, including specifications for riding crops.

In section 2290 to 2293, requirements for safety and health of jockeys are defined. It includes:

1. Jockey physicals by a licensed physician, affirming the jockey’s fitness to participate as a jockey.
2. Baseline concussion testing.
3. Jockeys cannot compete until the physical has been met.
4. A medical card is required to be attached to the safety vest of a jockey who is mounted on a horse, detailing jockey’s medical history.
5. The use of a properly secured helmet is required anywhere on racetrack grounds. This extends to properly secured safety vests.

NOTE: Items 1 and 2 above are to be shared with the State Racing Commission and the Authority.

**Jockey Enforcement**

The legislation entrusts the Authority with the oversight of these rules. The day-to-day enforcement of these rules falls to the tracks. There are various forms of enforcement penalties that can occur to punish violators including mandatory suspensions based upon a point scale for multiple violations. There are also penalties for jockeys who fail to meet guidelines. They are germane to each type of violation.

**Hiring of Support Specialist**

From a jockey perspective the hiring of a specialist signals that the Authority is gearing up to oversee and enforce the HISA as it relates to jockey health and safety, despite current litigation. While there is a stay in place regarding the implementation of HISA, this is a good time for tracks to make sure that they have a plan in place to achieve compliance with HISA guidelines relating to jockey health and safety. The good news is that a number of tracks have similar if not the same requirements already in place for jockeys. For those who do not have them this is a good time to revisit these guidelines.

**Invictus Underwriters’ Take**

Invictus Underwriters is the Managing General Underwriter for Jockey A&H insurance on behalf of Starr Insurance Companies.[[5]](#footnote-5) Our program provides highly competitive coverage and rates for jockeys and racetracks throughout the United States. Its also the only insurance program we know of that is purposely built to incentivize risk management and loss control at tracks through significant upfront discounts on insurance premiums.

From an insurance perspective, jockey health and safety is essential to managing jockey risk and claims. At Invictus we have built into our rating methodology a significant, specific discount for insureds that provide strong safety guidelines and protocols for jockeys. We do this in part by having dedicated underwriters and adjusters that work collaboratively to ensure that the safety of your jockeys remains our highest priority. Similarly, while we acknowledge that HISA is not without its controversies, it is our view that racetracks that are HISA compliant are deserving of insurance credits on their premium. We have, we believe, the only rating plan in the country that specifically applies such credits.

As part of the Invictus DNA:

* We support the safest racing environment for your jockeys and will take your safety measures into account at underwriting.
* Invictus’ program provides ease of underwriting through a centralized team, and active account management throughout the term of the policy. Whatever the needs, we can meet them in a streamlined way.
* Our dedicated adjustors are accustomed to sensitive claims that require a great deal of empathy.

Invictus is in the jockey accident business for the long haul. We have a committed underwriting, actuarial, claims, carrier and leadership team put together to meet your needs, and the needs of the industry. We intend to collaborate with you regarding the safety of jockeys and provide you with specific reductions in your insurance costs to reward your efforts.

**Conclusion**

Invictus will be keeping a keen eye out this year on when the Authority selects the Specialist, who it is and the other impacts of HISA upon the industry. We will advise you of critical events when it comes to jockey and racetrack risk and how they may impact jockey safety.

Should you have any questions or wish to learn more about the Invictus Jockey Insurance Program please have your insurance broker email Invictus Underwriter’s Chief Insurance Officer Ali Wilson at [awilson@invictusins.com](mailto:awilson@invictusins.com). We look forward to hearing from you.

1. Rep. Andy Barr, R-KY, who helped push to pass the revised HISA law in an [interview](https://www.ny1.com/nyc/all-boroughs/politics/2022/12/22/bill-to-avert-government-shutdown-includes-horseracing-law) with Spectrum News during the Kentucky Derby. [↑](#footnote-ref-1)
2. See Greenberg Traurig Alert, Equine Industry Group, Update: Fifth Circuit Again Reins in HISA, February 2023 [↑](#footnote-ref-2)
3. Id. [↑](#footnote-ref-3)
4. The Horse Racing and Integrity Safety Authority [@hisa\_us]. “HISA is hiring a Horsemen & Jockey Specialist to bolster our ongoing efforts to educate racing participants about HISA's systems and regulations.” *Twitter*, 20 January 2023. [↑](#footnote-ref-4)
5. Jockey Accident Insurance plans are underwritten by Starr Indemnity & Liability Company, a Texas domiciled corporation (NAIC Company Code: 38318: TX license number: 93542) with its principal place of business at 399 Park Avenue, 2nd Floor, New York, NY 10022. Starr Indemnity & Liability Company is currently authorized to do business in all states, the District of Columbia, and its territories. Not all accidental death coverage may be available in all jurisdictions. This website contains only a brief description of the coverages available under the policy and its certificate. The policy will contain reductions, limitations, exclusions, and termination provisions. This accidental death coverage provides insurance during a covered activity. You may have coverage from other sources that provide you with similar benefits but may be subject to different restrictions depending upon your other coverage. You may wish to compare the terms of these policies with your existing life, health, home, and automobile insurance policies. If you have any questions about your current coverage, call your insurer or insurance agent, or broker.

   Policy Form Number: AH-25001 and Certificate Form Number: AH-25001-C are administered by Invictus Underwriters. Its principal place of business at Invictus Underwriters, 2534 Main Street Glastonbury, CT 06033

   If you have any questions about the Jockey-Blanket-Accident plans offered on this website. You may contact the Customer Service Department at (860) 246-5700 or via email at info@invictusins.com [↑](#footnote-ref-5)