

GUIDELINES FOR PIT GATE OPERATIONS

1. USE ONLY RELEASE FORMS PROVIDED BY YOUR INSURANCE SUPPLIER
2. NEVER USE PHOTOCOPIES OF RELEASE FORMS (may be challenged in court)
3. KEEP THE ENTIRE RELEASE SHEET IN VIEW OF SIGNERS
 - a. Don't fold over the clipboard!
4. HANDLE AND FILE RELEASES WITH CARE
 - a. Check to be sure every release sheet is signed and dated
 - b. Don't fold when filing—use legal size file folder
 - c. Don't mark anything or make notes on releases, or highlight names
5. HAVE THE SAME PEOPLE HANDLE SIGN-INS AT ALL EVENTS
 - a. Be sure pit gate personnel sign and date each completed release sheet
6. BE SURE PIT GATE IS MANNED THROUGH ENTIRE RACE MEET
7. BE SURE PIT GATE STAFF KNOWS WHAT TO TELL PERSONS ASKING WHAT THEY ARE SIGNING!
 - a. Suggestion: "This is a release and waiver of liability. It means you are entering this restricted area at your own risk, and accept total responsibility for anything that may happen to you."
8. REQUIRE ALL PERSONS TO COME TO PIT WINDOW AND SIGN RELEASE!
 - a. Never pass clipboards into vehicles to be signed!
9. BE SURE EVERYONE ENTERING PITS/RESTRICTED AREAS SIGNS A RELEASE!
 - a. Include employees, press, guests, sponsors, all others.
10. DO EVERYTHING YOU CAN TO BE SURE EVERYONE KNOWS THEY ARE SIGNING A RELEASE!
 - a. Display releases prominently, in all busy areas: pit restrooms, refreshment stands, tech/scale area, pay windows, etc.
 - b. Mail release copies with annual memberships, or include in newsletter
 - c. IMPORTANT! Show and discuss release at pit meetings
 - d. Make large blowups of release, with sign, "THIS IS THE RELEASE YOU SIGN — KNOW WHAT IT SAYS!" and post them at pit entrance and other locations (preferably lighted).
 - e. Use a moving message sign at the pit window, that repeats, "YOU ARE SIGNING A RELEASEKNOW WHAT IT SAYS....COPIES AVAILABLE."
 - f. Imprint pit passes with a message of this type: "WARNING! The holder of this pit pass acknowledges signing the release and waiver, in exchange for admittance to restricted areas. By so signing, holder has waived certain legal rights, and acknowledges the potentially dangerous nature of activities in and adjacent to restricted areas."

LEGALERT, MARCH 2002

Q: We're cleaning our office files for the new year and wonder how long we should save the backgate waivers we have on file?

A: Insurers ask that you keep signed waiver forms securely filed at least as long as the statute of limitations in your state, typically that would be 2-7 years. The statute of limitations determines how long plaintiffs have before law prevents them from filing a lawsuit against your track. However, if it is possible, save them all for as long as possible, disposing of none. Insurers and attorneys who defend race tracks urge keeping waivers indefinitely because even when they are not used as evidence directly for circumstances in the year, or at the event, they are signed, they can be helpful evidence in suits in later years. For

example, you might be asked to produce waivers that show a plaintiff signed numerous waivers for numerous years before the year and event in which an incident occurred. This evidence might be the key to persuading a judge or jury that a plaintiff understood the assumption risk as he competed in race events, despite claims his attorney might make that he did not understand what he was signing. Ask your insurer for guidelines about waiver filing and safekeeping. They consider waiver filing very important and can tell you their preferences. Do your best to follow them.

LEGALERT, APRIL 2002

Q: At the Workshops attorneys recommend that all employees sign the waiver and release on race night, but if our pit steward, for instance, is injured by a car, who pays? Is it a worker's comp or a racing insurance claim?

A: As a precaution, and for reasons unrelated to work comp, attorneys recommend that all employees sign the waiver on race night, but this does not mean that the claim for an injury would be paid by your racing insurance policy. Most racing policies exclude claims that are determined to be worker's compensation claims. This is why it is necessary to carry worker's compensation insurance. Not only are your employees covered by worker's compensation insurance in the event of an injury, you are following your state laws and will not find yourself or your employee without coverage. As far as we know, worker's compensation is required of employers in every state, and there are penalties for employers who do not comply. Employees also may sue you in the absence of worker's comp insurance. Review your racing insurance policy and understand where it stands regarding worker's compensation. Talk with your insurance agent about worker's compensation insurance. If you are unsure where to find worker's comp insurance, you can often buy it from your racing insurance agent.

LEGALERT, JUNE 1998

Q: Some insurers allow a release to be signed once and kept on file. Others ask that everyone sign one every race night. Which is right? Which offers me the best protection?

A: We think that the basis of your question might be incorrect. All leading racing insurers ask that everyone entering a restricted area sign a release each time they enter. We've never seen the once-a-year situation you describe, and doubt it would be recommended. Insurers are very serious about this. It's their first line of defense in protecting you. They recommend procedures and guidelines that reduce the chance the waiver might be disallowed in court, as well as how tracks should file releases afterward and how to keep them for a period of years in case they are needed. Don't confuse the parental waiver used with the minor release with the waiver & release used with others entering the pit. These special waivers may be done once--or once a year--depending on the state and circumstances, but the procedures involved are different from those for the general waiver & release. All leading insurers will assist you in improving your waiver handling procedures, and most have written guidelines for your reference as well. Get in touch with your insurer. Legal experts at the Workshops repeatedly recommend that you should have the waiver signed by everyone every time. It supports the argument that entrants accept the risks they take when they enter restricted areas.

LEGALERT, JANUARY 1999

Q: Last season, I required track employees to sign the waiver each race night, but was never quite sure whether I should be doing that. I understand you discussed this question

at the Reno Workshop. Can you sum up the discussion?

A: Promoters often ask whether all their employees should sign the waiver. The question came up at Reno and legal-session panelists summed up their thinking this way. YES. All employees should sign, even though the waiver does not strictly apply to the jobs of some employees. Anyone who works in restricted areas should sign the waiver. While other employees who do not work in restricted areas might not seem to be waiver-signing prospects, panelists said it is good to require such employees to sign the waiver. Some employees may occasionally and unexpectedly perform certain tasks in restricted areas. A signed waiver is valuable to have on file in their case. Workers' compensation medical insurance covers employee workplace injuries, whether they occur in restricted areas or not, and the waiver has no application in medical insurance. Promoters should note that the medical insurance included with racing insurance excludes injuries that fall under workers' comp rules. Similarly, workers comp provides no liability coverage, which is where the waiver comes in. The waiver protects employees in liability situations. One never knows how circumstances occur, and there was agreement that while not strictly required in all cases, possession of signed employee waivers would in no way hurt under any circumstance.

LEGALERT, FEBRUARY 1999

Q: I've seen many ways of marking restricted areas. How do you properly do it? Is roping them off sufficient, or should they be fenced?

A: Restricted areas come in many shapes and sizes. You should consider the risks associated with your track and your fans' and drivers' habits, and establish restricted areas accordingly. No two tracks are alike, so what you do will differ from other tracks. Sign language is important. Among "no-no" restricted area signs we've seen are: signs reading, "Safety Zone," or "Safety Zone--no standing," or "Keep Back Dangerous Area." Such language is misleading or confusing, and may do more damage than good in court. If you want to keep fans from standing too near to debris fences, signs stating, "Restricted area- No standing" or "Keep out" are sufficient as long as security keeps a close eye on the area, and fans are kept from it under all circumstances. A secondary fence or post and rope barrier a few feet from the debris fence, if space is available, is advisable but not required. Once marked, enforce the rule. If you say an area is restricted, make sure no one stands there. Don't let security become lax. In areas like pits, a more positive barrier such as chain-link or wire mesh fence is advisable. Such areas should be clearly marked, "Restricted area. Unauthorized entry is trespass." Entry to such areas should be limited to restricted gates supervised by security or other personnel who check for proper credentials. Well-written, durable, pre-printed signs are available from Shumaker Products (219-426-0000), a former Workshops commercial registrant.

LEGALERT, JANUARY 2000

Q: If a driver or crew person signs a waiver for several weeks or seasons at my track, and then does not sign at one event, and is injured at that event, am I protected by the previous releases?

A: The waiver is essentially a week-to-week contract between you and your participants. The waiver is required by your insurer when your policy includes participant legal liability (PLL) or legal liability to participant (LLP) coverage. Except in cases where the absence of a signed waiver results from fraud or an inadvertent mistake, the signed waiver is a condition of PLL/LLP insurability. You assume the risk that results from the absence of the waiver, just as you would if you had no PLL/LLP. If you don't carry PLL/LLP, get a release anyway. The attorney you would hire to fight any suits needs it. This doesn't mean earlier

waivers wouldn't be valuable to defense attorneys who might defend your track, however, the earlier waivers do not technically apply to the claim. That is why having waivers signed at every event is so important. It is essential that all participants sign a waiver before they are admitted, and you should not admit them if they don't. Read the waiver and take the time to read your policy as well. Discuss any questions you have with your insurer so you are satisfied that you understand how your policy would respond to such circumstances.

LEGALERT, APRIL 2001

Q: After all the discussion about covenants not to sue and waivers and releases, which presumably prevent lawsuits, we hear of more and more lawsuits. Why? I thought that, under the law, someone who signed a waiver or covenant not to sue, was prevented from suing.

A: In a perfect world, yes. But, blame the overabundance of hungry attorneys or "victims" looking for a fast and easy buck-- either way, it happens. It's the world we live in. If people lived by their word, those who signed covenants and waivers would not sue, but those days are mostly gone. So, we are left with the necessity of going through covenant and waiver formalities as a means to defend race tracks. We cannot confuse right and wrong and the principles we were taught as children with the reality of our present legal system. While law-abiding citizens would presume that covenants or waivers would preclude lawsuits, they have in reality become simply tools defense attorneys use as they argue your side in court when litigation occurs. As such a tool, they are probably more important than ever, and it is wise to be as diligent as possible when gathering, handling and archiving them.

