

How to Play With Fire

When attending an Indy race or watching paint-ball competitions on ESPN2, you might wonder how businesses such as the track owners or paint-ball facilities survive when horrific events like accidents in the pits or paint ball shots in the eye occur. Given the fact that our society believes most Americans are willing to file a lawsuit over anything, how do these businesses manage to stay afloat without getting bombarded by lawsuit after lawsuit for what occurs on their property? Running a business that hosts dangerous activities involves taking these types of unique concerns into account. Aside from the obvious fact the people involved normally know what they are getting into, the businesses use specific agreements to “escape” from liability.

In Indiana, the courts have long held that parties are generally permitted to agree in advance that one is under no obligation of care for the benefit of the other, and shall not be liable for the consequences of conduct which would otherwise be negligent. In fact, these agreements that businesses use to “escape” from liability, generally called exculpatory agreements, are not against the general interest of Indiana public policy. These agreements are one of the fundamental elements that permit businesses such as race tracks, drag strips, paint-ball facilities or sky diving companies to exist. Without agreements such as these, lawsuits which could arise from any number of unfortunate events would simply shut these businesses down.

For example, before someone is permitted to enter the driver’s pit area at race tracks, he or she is typically required to sign a release agreeing that he or she will hold the promoters and track owners harmless for any loss or injury the person entering might incur. In a case entitled U.S. Auto Club, Inc. v. Smith, 717 N.E.2d 919, 925 (Ind. Ct. App. 1999), the widow of a race-car driver’s sponsor brought a wrongful death action against the race promoter after the sponsor was killed in the pit area during the race by a runaway car. The sponsor was not a member of the team or part of the pit crew but he was required to sign a release form prior to entering the pit area. The court held that the sponsor signed a valid release which barred any personal injury claims.

Accidents such as that in the Smith case are unfortunate. That being said, if businesses desire to offer these services and customers or attendees wish to engage in them, exculpatory agreements are a necessity.

Exculpatory agreements are viewed favorably by insurance companies and may even be required for certain types of businesses to obtain insurance. To be effective, the agreements need to cover not only the business, but its employees, the attendees and virtually anyone on the business premises. If the agreement is broad enough and precisely drafted, it will significantly, if not completely, reduce the likelihood that a lawsuit for personal injuries resulting from such dangerous activities will be brought against the business.

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Often times there are exculpatory statements on the back of admission tickets to events like car racing. Those types of statements are treated differently and not within the scope of this article.