

Managing Risk and Responsibilities for Cycle Clubs and Race Organizers

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A friend of mine recently asked for my help her to identify issues of liability for an indoor cycle event she and some others were organizing for a charity event in New York. They wanted to know what they should do to protect themselves from liability if someone got hurt at the event. She reached out to me for two reasons. The first was to make sure I would attend. The more important reason was because she knew I was a cyclist as well as an attorney who has represented injured cyclists. I was happy to provide some guidance for the event and its organizers. I am now also planning on becoming a sponsor as well as a participant.

I realized that after this inquiry, as the sport of cycling grows here in New York, as well as these indoor events such as these “spin-athons”, there is little guidance for sponsors, clubs and race organizers available. I decided to write this short guideline on this issue. I must warn the user of this article that this is merely a guide and it should not be used in lieu of contacting a competent attorney, insurance agent, or risk management consultant. Each event and each jurisdiction is specific and the risks, liabilities and needs of coverage will reflect that.

Incorporate –

The first thing to do as well as one of the easiest things to do is to incorporate. The most simple of corporations can be formed by finding on-line services. The more complicated ones require the use of an attorney and accountant. By forming a corporation, LLC or Not-for-profit, you can protect yourself from personal liability. The choice of which of these entities to form is a decision that more than likely will require the assistance of a professional.

Insurance –

Even with the most perfectly drafted waiver, and the law on your side, it is just a very dangerous idea to run an event or race without having a policy of insurance to protect you or your club. Also, if a member of the club or participant is injured, as well as an innocent bystander, it allows them a method to be compensated. This will also provide you with protection if a member of your club or race participant injures a bystander. I can not over emphasize the need to have a policy in effect.

In a case called Gortych v. Brenner, Gortych was a cyclist riding in Central Park on a morning that the New York Triathlon Club was holding a race. One of the participants collided with Gortych causing injuries. Gortych sued the Club together with the City of New York for not properly warning about the event and for failing to clearly mark a race lane, although the park was open to the public. The Court found that Gortych did not assume the risk of injury (see below for more on this) by riding while the event was going on and allowed the case to proceed.

It also found that the club must indemnify the City for the accident. Below I now discuss the topic of indemnification.

Indemnification and additional insured's-

When a club or sponsor holds an event on another's property or space, they will almost always require, or at least they should be required to purchase a policy of insurance and name them as an additional insured. This means that you purchase insurance for them to protect them from any claims. In addition, the contract or agreement between you and them will most likely, or again it should require you to provide contractual indemnification. That means that if they get sued, and a plaintiff wins, you are obligated to pay that person. Most applications, permits or rental agreements will contain language such as you agree "to indemnify and hold harmless the City, the landlord or department from any and all claims *whatsoever* that may result from such use". By purchasing a proper policy of insurance as well as naming the landlord or city as an additional insured, you can protect yourself from claims of indemnification or contribution.

Waiver-

A properly drafted and properly executed waiver of liability can be a very strong defense for a sponsor, cycle club or event organizer hoping to protect them selves from liability. The waiver should be clear, unambiguous, and have the participant acknowledge the known risks of the event. Minors must have a release signed by a parent or legal guardian. If the participant only speaks Spanish and not English, the release must be translated. The participant must have mental capacity to understand the release language.

In a case called Tedesco v Triborough Bridge & Tunnel Auth., Tedesco, a cyclist, was injured on the Verrazano Narrows Bridge during the five borough bicycle tour. The Court held, at that the release Tedesco signed was enforceable. Similarly, in Brookner v New York Roadrunners Club, Inc. , Brookner sustained injuries in the 2004 New York Marathon, while running on a Brooklyn street. Brookner, prior to the race, signed the clubs waiver of liability acknowledging the risks and releasing the Road Runners Club from any liability. The Court held the waiver enforceable and that Brookner assumed the risk of injury by participating in the event.

Assumption of Risk Defense-

In New York State, one who knowing engages in an activity or event with a know risk of injury is barred from bringing a lawsuit for an injury that occurs due to a risk inherent in the sport or activity. For instances, a player hit with a hockey puck during hockey game or a pitcher being struck by a baseball hit from a batter assumes those risks when they participate in the event. The courts recognize that risks involved with sporting events are incidental to a relationship of free association between the sponsor and the participant and that both parties are perfectly free to engage in the activity or not as he or she wishes. The sponsor is only obligated to make the conditions of the event or race as safe as they appear to be. If the risks of the activity are fully

comprehended or perfectly obvious, the participant has consented to them and the sponsor owes no more duty.

In a case called Conning v. Dietrich, cyclist Suzanne Conning a resident of Brooklyn fell off a **bicycle** while participating in a triathlon training ride on Route 28, a designated state **bicycle** route, in Ulster County. She encountered some uneven pavement along the edge of the road, lost control of her bike and fell. After her fall she was struck by an automobile. Ms. Conning had been training with her club intensively for two upcoming triathlons she planned to enter. As a result of her accident she sued among others, the Brooklyn Triathlon Club (BTC) who organized weekend trips to allow triathletes, such as Conning, to train for upcoming events. BTC designated John Stewart, who she also sued to lead its **cycling** training the weekend of Conning's accident. Ms. Conning also sued Dietrich, the driver and owner of the car that struck her. Under the doctrine of assumption of Risk, the Court dismissed the case against BTC and Stewart. The Court wrote that Conning, an experienced cyclist, assumed the risk of injury as well as executed a waiver and release of liability (see below for more on waivers) and could not maintain a Claim against these two defendants but allowed her to proceed against the car that struck her.

Using this analysis, a rider struck by a car during a sponsored ride assumes the risk of injury as being struck by a car is a known risk of injury while cycling. The rider may have a case against the car, but a difficult case against the sponsor of the ride. However, if the sponsor creates an surprise or unknown risk, such as a ride over dirt or mountains' on a road bikes, or some other unanticipated terrain that the riders did not expect, this may create an unknown or un-consented to risk creating liability to the sponsor or club.

If you can't sue the Club or Sponsor, who can they sue?

Though the event sponsor, cycle club, or organizer may escape liability for the participant's injury, the injured cyclists or other participant may still have a lawsuit against some other party who caused his or her injury. For instance the cyclists may still bring a claim against the car that struck them, the municipality or city that caused the road defect or any other person or entity that proximately caused their injury. The Club or sponsor should be aware that if that occurs, that defendant may assert a counter-claim, alleging that if they are responsible to pay for the injury of the participant, then you or your organization should share in the liability and damages if you contributed to its cause. The theory is that this defendant (such as the car or municipality) did not waive the right to sue, so if they are responsible, a jury should be allowed to consider whether you contributed to the damages.

Conclusion-

Above is a brief guideline for some issues that may confront cycle clubs, event organizers and race organizers and a look at how to protect you and your club. For more information on this and other cycling issues please visit my website, NewYorkBikelawyer.com or our Blog NYCyclaw.com. For other personal injury issues, visit, Flanziglaw.com.

Safe Riding!!

