



LIABILITY ISSUES IN THE MANAGEMENT OF  
RECREATIONAL RACE EVENTS (TRIATHLONS,  
MARATHONS, OBSTACLE COURSE RUNS, ETC.)

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## Foot Races (marathons, etc.)



# Triathlons



## Mud Runs & Obstacle Course Runs



## Potential Incidents

### Drowning

- Forty-three participants died in sanctioned triathlon events between 2003 and 2011. Thirty of the 45 triathlon deaths happened during the swimming portion. All 30 were thought to be the result of "sudden cardiac death."
- Three triathletes drowned in Wisconsin races between June and August, 2009; One drowning gave rise to a lawsuit: *Schmidt v. Midwest Sports Events*, No. 10CV1509, Winnebago County, 2010.
- March 3, 2013 - First drowning ever during the 33-year history of the Escape from Alcatraz Triathlon, "amid 6-foot swells and a powerful outgoing tide."
- April, 2013 - Avishek Sengupta, 28, dies in "walk the plank" water obstacle in West Virginia Tough Mudder. His drowning is the first in an obstacle run. It allegedly followed 20 water rescues in the race.

## Potential Incidents, cont.

**Heatstroke** - Kansas City Warrior Dash 2011, run in heat indexes exceeding 100 degrees, had two heat-related deaths.

**Dehydration and Hyponatremia** - Two recent deaths in Chicago Marathon - 2007, 2011. Debate regarding whether causes were dehydration, hyponatremia, or underlying heart condition.

**Traumatic Injury** - Among the triathlon-related athlete deaths between 2003-2011, five were traumatic, caused by injuries sustained in cycling crashes. Of the non-traumatic fatalities, 30 occurred during the swim, three occurred during the bike, three occurred during the run, and two occurred after an athlete had completed a race.

Ten injuries and two heart attacks occurred in 2013 West Virginia Tough Mudder.

## What is Race Directors' Duty of Care?

*Lautieri v. Bae*, CA 01-4078, Mass. 2003 - As triathlon participant waived negligence claims, standard was whether race director was liable for gross negligence, specifically whether failure to follow USAT guidelines was gross negligence.

*Mark v. Moser*, 746 N.E.2d 410 (Indiana App. 2001) - Adopting recklessness standard for cause of action between two participants (one cyclist cut off another in violation of USAT rules, causing injury, but conduct was not reckless, was foreseeable, and therefore risk was assumed by plaintiff). However, Wisconsin has adopted the negligence standard in recreation cases - *Lestina v. West Bend Mutual Ins. Co.*, 176 Wis.2d 901 (1993).

*The determination of the Standard of Care is dependent on the language and enforceability of any waiver.*

# The Application of Industry Standards

## **Marathons** - Sanctioning available from USA Track & Field

Sanctioning standards:

- No hazards or obstacles
- Recommendations for premises control, risk avoidance, and medical supervision
- Requirement of insurance

## **Triathlons** - Sanctioning available from USA Triathlon

Sanctioning requirements:

- Detailed and updated course maps
- Course details
- Safety plans
- Volunteer plans
- Traffic control
- Security
- Transition area design
- Emergency and medical plan
- Weather contingency
- Rules Enforcement

## **Obstacle and Mud Runs** - No governing or sanctioning body

## Tension Between Marketing and Participant Preparedness

- When USA Triathlon formed in 1982, it had 1,500 members. In 2011, membership stood at 483,602. Between 2003 through 2011 nearly 23,000 sanctioned events were held, involving more than three million participants. In 2011, the most recent year reviewed, there were 4,334 events that involved 537,317 participants.
- There have been about 750,000 Tough Mudder participants since the event started in 2010.
- There was a record 518,000 marathon participants in 2011, compared to 25,000 in 1976.
- The median marathon finish time has increased from 4:03 and 3:32 in 1980 to 4:42 and 4:17 in 2012 (women and men respectively).

## The Extent of the Assumption of Risk

"By engaging in a sport or recreational activity, a participant consents to those commonly-appreciated risks which are inherent in and arise out of the nature of the sport generally and flow from such participation." (*Rivera v Glen Oaks Village Owners, Inc.*, 41 AD3d 817, 820 [2d Dept 2007]).

*Conning v. Dietrich*, (2011 NY Slip Op 51340) - Cyclist with triathlon training group assumed risk of imperfect roadway, both implicitly by having some experience and participating, and explicitly with written waiver.

**Wis. Stat. 895.525(3) (3)** APPRECIATION OF RISK. A participant in a recreational activity engaged in on premises owned or leased by a person who offers facilities to the general public for participation in recreational activities accepts the risks inherent in the recreational activity of which the ordinary prudent person is or should be aware. In a negligence action for recovery of damages for death, personal injury or property damage, conduct by a participant who accepts the risks under this subsection is contributory negligence, to which the comparative negligence provisions of s. [895.045](#) shall apply.

## The Impact of Waivers

*Banfield v. Louis*, 589 So.2d 441 (Fl. App. 1991) - Plaintiff sued race organizers, promoters, sponsors, for failing to control traffic on bike course in 1985 triathlon. Defense - Banfield signed entry form including waiver of negligence claims. Court upheld the waiver and dismissed claims. Banfield did not make a sufficient showing of "great prejudice to the dominant public interest."

*"It seems that society, today, may be more aware than ever of the importance and fun of exercise. Yet, an infinitely small percentage of the public appear to participate presently in triathlon races. At some future date, when cultural changes produce Monday Night Triathlon, this court may well find itself hard pressed not to conclude exculpatory clauses signed by triathlon participants void as a matter of public policy."*

## Waivers in Wisconsin

Wisconsin law is less favorable toward exculpatory waivers than most states - *Atkins v. Swimwest Family Fitness Ctr.*, 2005 WI 4, ¶ 44, 277 Wis. 2d 303, 691 N.W.2d 334; To be enforceable, a waiver must have:

- A Single purpose
- Clarity as to rights being waived
- Narrowness
- An opportunity to bargain

## Schmidt v. Midwest Sports Events, No. 10CV1509, Winnebago County, 2010.

### Key Allegations:

- Brought under Wis. Stat. 895.03 (recovery for death for wrongful act or neglect), and Wis. Stat. 895.04; Alleged negligence.
- Alleged that Midwest Sports violated the duty of care by not having on-site ambulance service, something that would be required if USTA sanctioned.
- Alleged that race director was not “certified” and race not USTA sanctioned.
- Alleged that defendant “routinely minimized risk and danger and emphasized that entrants need not be experienced or physically fit athletes.”

### Conclusions

- Defendant admitted “duty of care to participants” in answer.
- Settled for \$110,000, plus agreement to provide ambulances at events for two years.

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