

GUIDELINES FOR CONTRACT REVIEW BY REGIONS ENTERING INTO CONTRACTS FOR USE OF AN EVENT SITE

When a region wants to host a moving car event it is more often than not asked to sign a contract with the site owner or manager. Frequently these contracts are signed by the Region president or other officer without proper review other than with regard to price and dates because the language is legal mumbo-jumbo and it is the same contract that the region has been signing for the last 15 years. Here are a few things that you should look for before signing the agreement. Do not be embarrassed to ask an attorney within your Region or Zone who is familiar with contract negotiation for their help.

PREMISES LIABILITY

Contracts for the use of an event site are often drafted very unfavorably to the Region or Zone because the premises/site owner views PCA's activities as involving some risk for which the owner does not wish to be liable. But in the process of using the contract to insulate itself from risk for the driving portion of the event, the premises owner also inserts a clause or clauses in the contract providing that PCA will be responsible for all liability for any injuries or damages that occur on the premises. We then invite our friends, family and acquaintances to the event. During the course of the event one of these folks is injured, perhaps while climbing up and down bleachers or perhaps while walking under an overhead viewing stand. The friends and family are not part of PCA and view their injury as something for which someone else should have to pay because the bleachers did not have the proper railings or the viewing stand was not erected sufficiently high to provide proper head clearance. They file suit against the premises owner and assume that there is no liability to PCA. However, as a result of the contract between the premises owner and PCA, the owner demands that PCA defend and indemnify it in connection with the personal injury claim.

PCA carries coverage for such claims, and therefore the claim is turned over to the insurance company for defense. Eventually, the claim, if not settled, is tried to judgment in court and the property owner is found liable for the injury. However, it is not the premises owner who has to pay the judgment, but PCA due to the contractual indemnification requirements. PCA's insurance losses are now higher and as a result the insurance premiums go up the following year and this cost is in turn passed along to the regions to some extent, if not entirely. So what can be done to avoid this type of problem?

First, you should try to eliminate any language in the agreement that would pass liability to the Region or Zone for non-driving accidents that arise strictly from the condition of the premises. If that is not possible then the hosting Region or Zone should do a thorough inspection of the facility (or the portion of the facility) that it is using. We frequently confine our safety inspections to the portions of the facility upon which the driving event will actually be held. But truth be told, that is not where the majority of losses occur. The inspection should include roads, grandstands, viewing areas, rest rooms, walkways, and other areas accessible to PCA participants. Deficiencies should be noted in writing and brought to the attention of a representative of the site owner/manager. If a grandstand has defects, for example, then the Region should insist that access to it be eliminated. Please note that many track rental contracts require the Region to do an inspection and report such deficiencies. If the deficiencies are not noted, then it is more likely that liability will accrue to the Region. If the site owner will not take action, then consider taking action on your own to limit access to some area that you view as a danger.

SPECTATOR EVENT

It seems to be more popular now for event sites to seek additional revenue by charging spectators to come in and see our events. PCA's policy does not provide coverage for "spectator events." PCA only holds non-spectator events. Everyone who enters the premises of a PCA moving car event should be a driver or invited guest of a driver and should have signed the appropriate Release and Waiver. This makes them participants and not spectators. You should never charge admission to the public to view a PCA event inasmuch as PCA does not have coverage for such events and losses that may arise during such events. If the site owner/manager wants to make it a spectator event then you should attempt to negotiate this provision out of the agreement. History has shown that the site owner actually makes very little profit from spectators. Try to convince them of this and, if necessary, ask if the region can pay slightly more to eliminate the spectator clause.

If the owner will not do so, then advise the site owner/manager that the site owner must provide spectator liability coverage and add PCA and the region as additional insureds under its spectator liability policy and provide a certificate of insurance coverage to PCA. This part is non-negotiable because PCA does not have such coverage and cannot get such coverage. Additionally, language must be added to the contract requiring the site owner to indemnify PCA and its regions for claims and causes of action arising out of injuries to spectators. Again, consult with an attorney in your region about appropriate language.

MULTI-USE SITES

When you are contracting with a facility having multi-use areas, such as a road course, drag strip, kart track, motocross area), the Region or Zone should use its best efforts in the negotiation of the contract to clearly delineate the areas that are to be utilized for the PCA event and to disclaim liability for any exposures outside of the PCA event area.

INSURANCE CLAUSE

Insurance clauses should be reviewed to make sure that PCA has the types of coverage that the site owner/manager requires under the contract. Summaries of the liability coverage and participant accident coverage, along with policy limits, are on the website and you should review for compliance with the contract requirements. However, the contracts often call for automobile liability coverage and worker's compensation coverage. These requirements are problematic as explained below and you will not be able to provide a certificate of insurance for these two coverages.

PCA only has worker's compensation coverage for the small office staff in the national office. PCA is a volunteer organization. Therefore you should try to negotiate out of the contract any requirement for worker's compensation insurance or a certificate of such coverage. It is simply not applicable to a PCA event.

PCA does not own any automobiles and therefore does not carry automobile liability coverage. Again you will have to explain the nature of PCA and negotiate out of the contract any requirement that PCA provide a certificate of insurance coverage for auto liability coverage.

INDEMNITY CLAUSES

The site owner/manager will use the indemnity clause to shift any and all liability for anything that happens to PCA. The Region or Zone will often have little negotiating leverage to get these clauses changed. However, do not give up until you try to negotiate some. At least try to limit PCA's indemnity of the site owner/manager to liability arising out of the negligence of PCA. Also, as stated above, try not to indemnify the site owner for liability arising out of the condition of the premises.

NON-STANDARD EVENTS

If you are running a non-standard event and are not presented with a contract for the use of facilities or in connection with someone's services, then you should give very serious consideration to entering into a contract that provides for the allocation of risk and determines in advance whose insurance coverage will be in effect. Many Regions hold events of all descriptions for charity or swap meets that are to no one's economic benefit. They might be held at someone's shop or home. You should take a moment to consider whose insurance is at risk if something does not go as planned and someone is injured or their property is affected. If agreement can be reached, then put the agreement in writing, even if it is just a letter agreement. Certainty is better than uncertainty when it comes to risk allocation. Uncertainty almost always leads to litigation after the bad event happens, and litigation is in itself expensive and time consuming for all parties. Certainly, if you have questions regarding whether your intended event or risk exposure would be covered under our insurance coverage, then please ask before the event and not after something happens.

CO-SANCTIONED EVENTS

The other type of non-standard event that you should avoid is a driving event co-sponsored with another car club. Many smaller Regions believe that they could not afford the rent for a facility unless they partner with another club to co-sponsor an event. When an event is co-sponsored you invariably run into problems with control over the event, whose rules are in effect, whose insurance is in effect, and other similar questions. If you think that such questions are difficult to answer ahead of time, wait until you try to decide them after a loss has occurred. You are far better off working cooperatively with another club to support each other's events so that there is full participation in an event. For example, you have a BMWCCA chapter in your area that runs DE's which compete with your Region's DE's. Rather than co-hosting events and sharing the proceeds, agree with the other club that you will do everything you can to promote their event if they will do the same for your events. Then when the PCA event takes place you know that your Region leadership is in charge, your rules are in effect and your insurance is in effect. When the BMWCCA event is run you know that their leadership, rules and insurance are in place. You can even go so far as to share instructors at the events, but note that the PCA instructors will not be acting as PCA members when they instruct at a BMWCCA event, but as individual instructors covered by the BMWCCA coverage.