

I wish to provide further information in relation to the matters raised at the recent Pre Decision Conference held on the 22 Feb 2010 and submissions provided by Premier Speedway Club, Murray Bridge Sporting Car Club and Brisbane International Speedway and others, (the applicants).

I submit that:

- 1) NASR's insurance and licensing scheme is simply a strategy to further consolidate their dominant position in the market place.
- 2) Overwhelmingly, most major events, national championships, state championships, national and state series for all the "National Classes of Speedway" are held at NASR tracks. This clearly is a dominant position in the market place.
- 3) The applicants are responsible for the safety standards at their venue and that their seemingly simplistic reliance on the NASR rules and regulations is a furphy given that NASR's Rules and regulations clearly state "*No expressed or implied warranty of safety shall result from any publication, enforcement or compliance with these rules, nor any variation or deviation of these rules pursuant to rule 1.3, nor any supplementary regulations approved pursuant to rule 1.4 and such enforcement and/or compliance is in no way a guarantee against injury or death to any participant be they a Driver, pit crew member, official, spectator or any person whatsoever.*"
- 4) The applicant's operational efficiency, risk profile and safety standards will not be compromised if they accept licenses from a range of other providers such as the ¹SCCA, ²VSC or the ³NDRA. To substantiate this, I provide a copy of the Public Liability Insurance "Certificate of Currency" for ⁴Rolling Thunder Raceway (RTR). (See attachment A). Please note:
 - a. The policy is not conditional on any one supplier of competitor licences or any specific licensing arrangements.
 - b. It lists all participating entities and associated members which are to be covered under the policy.
 - c. As the promoter of speedway events at RTR, I have accepted licenses from the VSC, SCCA, NASR and NDRA and furthermore, at independent sprint car events, these competitors have raced together in the same event.
 - d. As a promoter of speedway events at RTR, the fact that a competitor has either a VSC, SCCA, NASR or NDRA competitor license is a clear indication to me that the competitor has a basic level of Personal Accident Insurance as licenses are not issued by these organisations unless the participant demonstrates that they have a satisfactory level of personal accident insurance.
 - e. The fact that each participant has personal accident cover does not reduce the requirement for the promoter to provide a safe environment, and in any event, many aspects of the NASR personal accident cover is simply a duplication of cover/benefits that participants already have. For example : ambulance cover, income protection, sick leave credits, Medicare/hospital benefits, death policies, pension cover and cover via the TAC when travelling to and from the race event.

¹ SCCA: Sprintcar Control Council of Australia Inc

² VSC: Victorian Speedway Council Inc.

³ NDRA: National Dirt Racing Association Inc

⁴ Rolling Thunder Raceway at Bacchus Marsh, Victoria. All speedway events at the venue are promoted by R Solomon on behalf of Formula Motorsports Group P/L

- 5) The Applicant's operational efficiency and safety standards will not be compromised if they accept personal accident insurance from suppliers, other than NASR. **Insurance cover** maybe supplied by organisations such as the SCCA or VSC or from independent providers such as Combined Insurance of Australia. To substantiate this, I provide a copy of my Combined Insurance policy (See attachment B). By providing a visual inspection of the policy and noting the insurance number on the waiver form at the pit gate, it has allowed me access to speedways such as Redline Speedway (Ballarat), Rushworth Speedway, Parramatta City Raceway (NSW) and many others, so why is it so difficult that NASR tracks cannot accept this.
- 6) The Speedway sector can function successfully without any further intervention by NASR. In particular:
- a. The current network of clubs and associations functioned effectively prior to the introduction of NASR and has continued this performance even with the additional costs imposed by NASR on the sector over the past ten years.
 - b. The level of expertise associated with the administrators of clubs and association throughout Australia is in my opinion, far better than that of NASR.
 - c. There are already discussions regarding the development of a National "Not for Profit" organisation to administer the speedway sector.
- 7) If the application was rejected as proposed by the ACCC's preliminary decision, the Applicants can continue to promote events as before and make appropriate decisions about how these events will be conducted. In particular;
- a. Accept the NASR Racing Rules and Regulations if they desire.
 - b. Utilise the Racing Rules and Regulations and officials (if required) that are associated with each class/club/association.
 - c. Directly organise events with the representatives of the competitor organisation.
 - d. Develop and promote independent events by direct contact with individual participants.
 - e. Impose additional safety arrangements appropriate to each individual venue as the promoter is responsible to provide a safe environment and cannot pass this responsibility on to any other club, association or NASR.
 - f. Purchase public liability insurance to suit their venues risk profile from the supplier of their choice.
 - g. Deny access to individuals that have displayed inappropriate behaviour, if required.
 - h. Accept formal notifications from competitor groups and or other tracks that an individual driver/s maybe suspended from racing.
 - i. Utilising effective 'Release and Waiver, Assumption of Risk, Warrants and Indemnity Agreement for participants that enter the Pit Area. (See attachment C)

Ray Solomon
On Behalf of Formula Motorsports Group Pty Ltd.





ASSUMPTION OF RISK, WARRANTS AND INDEMNITY AGREEMENT

In this Release and Waiver of Liability:

"Releasees" means promoters, participants, racing association, sanctioning organizations or any subdivision thereof, track owners, officials, car owners, drivers, pit crews, rescue personnel, promoters, sponsors, advertisers, owners and lessees of premises used to conduct the Events, premises and event inspectors, surveyors underwriters, consultants and others who give recommendations, directions, or instructions or engage in risk evaluation or loss control activities regarding the premises or Events, and each of them, their directors, officers, agents and employees.

"Restricted Area" means and includes the pit lane/alley, pit paddock, race track or other areas designated by the Promoter as being restricted to access by authorized personnel and not generally accessible by the public;

All other capitalized terms used will have the same meanings ascribed to them in the attached application form.

NOTE: Section 74 of the Trade Practices Act ("the Act") implies a warranty of due care and skill into contracts for the supply of services to consumers, as defined in the Act. To the extent that the warranty applies to any contract relevant to the Release and Waiver of Liability, it cannot be excluded.

Subject to any statutorily implied warranty, if applicable; and **IN CONSIDERATION** of being permitted to compete, officiate, observe, work for, or participate in any way in the EVENT(S) or being permitted to enter for any purpose any **RESTRICTED AREA EACH OF THE UNDERSIGNED**, for himself/herself, his/her personal representatives, heirs and next of kin:

1. **Agrees**, if the circumstances permit, to bring to the attention of any Event official any act, fact, matter or thing, which comes to his/her attention which s/he apprehends poses a risk of danger to him/her or to third parties and, all circumstances, to immediately leave any Restricted Area if it is necessary or desirable to avoid or minimize the risk of personal injury to him/herself or others.
2. **HEREBY WAIVES, RELEASES, DISCHARGES AND COVENANTS NOT TO SUE** the Releasees from liability of any nature whatsoever, howsoever arising from, my participation, in any capacity whatsoever, in any competitive motor racing event held at the Venue.
3. **HEREBY INDEMNIFIES** and saves harmless the Releasees from and against liability arising from any claim, demand, or legal proceedings for recovery of damages for loss or damage of any nature whatsoever suffered as a result of any personal injury sustained, or death or property damage occurring in any Restricted Area or from my participation in any competitive motor racing event conducted at the Venue.
4. **HEREBY WARRANT** to the Releasees, That: (a) I have reviewed all risks associated with my participation in competitive motor racing events and I am satisfied that I have sufficient ambulance cover, injury assistance, medical benefits, personal accident insurance, income protection, hospital benefits including all other types of benefits or insurances, to cover me from and against any and all loss and damage which may be suffered by me (including personal injury and property damage) as a consequence of any act or omission of any person in the course of competitive motor racing at the Venue; (b) I have reviewed all types of safety apparatus available on the market, (including, but not limited to, helmets, neck and head restraints, gloves, driving suits and underwear, safety footwear, seats and seat belts), that is associated with my participation in competitive motor racing events and based upon this information, I am satisfied that I utilize the most appropriate safety apparatus to protect me in the event of any accident in the course of competitive motor racing, furthermore, I take full and sole responsibility for the fitting and proper use of all safety equipment used by me. (c) That if I am an owner/driver, the Motor Racing Vehicle has been mechanically examined by a suitably qualified person to ensure that the Motor Vehicle is in sound condition suitable for competitive motor racing of vehicles in the Class and that it does not pose a threat to the safety of the driver or other participants at the venue, (d) That work safety standards will be adhered to by race team personnel when working on the race car.
5. **THIS ACKNOWLEDGEMENT AND CLAUSES 2, 3, and 4 above**, are binding upon me, my personal representatives, assigns, heirs, and next of kin.
6. **Agrees** that the releases and indemnities given under clause 2, 3 and 4 extend to any negligent act or omission by the Releasees in the course of conducting any competitive motor racing Event at the Venue and include any act or omission which may occur in administering emergency procedures, whether by way of first aid or otherwise.
7. **HEREBY VOLUNTARILY ASSUMES FULL RESPONSIBILITY FOR ANY RISK OF BODILY INJURY, DEATH OR PROPERTY DAMAGE** arising out of or related to the EVENT(S) whether caused by the **NEGLIGENCE OF RELEASEES** or otherwise.
8. **HEREBY acknowledges** that **THE ACTIVITIES OF THE EVENT(S) ARE VERY DANGEROUS** and involve the risk of serious injury and/or death and/or property damage. Each of the **UNDERSIGNED** also expressly acknowledges that **INJURIES RECEIVED MAY BE COMPOUNDED OR INCREASED BY NEGLIGENT RESCUE OPERATIONS OR PROCEDURES OF THE RELEASEES**
9. **Hereby agrees** that this Release and Waiver of Liability, Assumption of risk and Indemnity Agreement extends to all acts of negligence by the Releasees, **INCLUDING NEGLIGENT RESCUE OPERATIONS** and is intended to be as broad and inclusive as is permitted by the laws of the State/Territory in which the Event(s) is/are conducted and that if any portion thereof is held invalid, it is agreed that the balance shall, Notwithstanding, continue in full legal force and effect.

I HAVE READ THIS RELEASE AND WAIVER OF LIABILITY, ASSUMPTION OF RISK AND INDEMNITY AGREEMENT, FULLY UNDERSTAND ITS TERMS, UNDERSTAND THAT I HAVE GIVEN UP SUBSTANTIAL RIGHTS BY SIGNING IT, AND HAVE SIGNED IT FREELY AND VOLUNTARY WITHOUT ANY INDUCEMENT, ASSURANCE OR GUARANTEE BEING MADE TO ME AND INTEND MY SIGNATURE TO BE A COMPLETE AND UNCONDITIONAL RELEASE OF ALL LIABILITY TO THE GREATEST EXTENT ALLOWED BY LAW.

TO THE EXTENT THAT LIABILITY IS UNABLE TO BE EXCLUDED AT LAW, THE LIABILITY OF THE RELEASEES IS LIMITED TO THE EXTENT OF INSURANCE COVER EFFECTED BY THEM FOR THE INCIDENT RESULTING IN LOSS OR DAMAGE.

Insurance # Pass #	Print Name Here	Sign Here	Duties

Witness Signature

DATE/...../.....