

Court Decision On Overflow Parking Could Be Welcome News For Race Track Promoters

By LOU LONG

Overflowing parking lots can be a problem for race promoters. Race fans often improvise by illegally parking along public roads that access the speedway, parking without permission on lots used by nearby businesses or on vacant lots, or even by parking in the yards of enterprising homeowners living adjacent to the speedway. While some may view this as a good problem for promoters, it was a source of potential liability for injuries that could result from foreseeable accidents involving fans walking on or across roads to enter upon speedway grounds. However, the Pennsylvania Superior Court recently upheld a decision that exonerated the owners of a nightclub from such liability.

In *Newell v. Montana West, Inc.*, 2017 WL 219102 (Pa. Super. January 19, 2017), the owners of a nightclub were sued by the estate of a patron who was struck and killed by a motorist following a concert. The accident happened on Pennsylvania Route 309, a four-lane highway. Like many other patrons, the victim had parked at a business located across the highway from the club. He was returning to his car after enjoying part of the show.

The suit alleged that the club provided insufficient parking, making it necessary for patrons to incur the added risk of parking elsewhere and crossing the highway when going to and from the concert venue. The estate further claimed that the club was aware of the dangers, having taken actions in the past to dissuade patrons from doing so, or to prevent them from parking there.

The club filed a motion for summary judgment, contending that it owed no legal duty to the patron who was injured on a public roadway, that it had no duty to provide adequate parking, and that it did not voluntarily assume any duty through prior safety measures. The lower court granted the motion, and dismissed the case. The Superior Court affirmed.

The court first addressed the

issue of whether the club, as a landowner, owed a duty to pedestrians on an adjoining roadway. In holding that there was no such duty, the court explained that any duty of care owed to the pedestrian must belong to those who maintain the road and the motorists who drive upon it. The duty does not extend to landowners who have premises adjacent to the roadway. In reaching that conclusion, the court drew upon a prior decision from its sister court, the Commonwealth Court, which had absolved a landowner of any liability to a motorist who was injured when her vehicle collided with a truck on a highway. It also followed the lead of a number of other jurisdictions that involved similar situations. Interestingly, several of those cases involved racing events: *Davis v. Westwood Group*, 652 N.E.2d 567 (Mass. 1995); *Chouinard v. New Hampshire Speedway*, 829 F. Supp. 495 (D.N.H. 1993); and *Dixon v. Houston Raceway Park*, 874 S.W.2d 760 (Tex. App. 1994).

Next, the court took up the issue of whether the club had any duty to provide adequate parking. The evidence established that the club exceeded local zoning requirements by having 260 parking spaces, as opposed to the minimum requirement of 231.

Nonetheless, the estate presented an expert who opined that the club should have had parking for about 330 vehicles. Despite assuming the accuracy of the expert's report, the court nonetheless held in favor of the club, deeming the theory to be at odds with the cases that protected a landowner from claims by pedestrians injured on public roadways. More to the point, though, the court drew upon *Ferreira v. Strack*, 636 A.2d 682 (R.I. 1994), a case that involved three parishioners who were struck by a vehicle as they crossed the street from the church to the lot where they had parked to attend Christmas Eve services. In that case, the court had ruled that neither the lack of adequate parking nor the foreseeability that many parishioners would park at a nearby lot requiring them to cross the street warranted the imposition of a duty. The court was also troubled by the fact that imposing a duty upon the club could, by extension, subject countless small businesses—like dry cleaners, retail merchants, and pizza shops—that have no parking whatsoever on their premises.

Further, the court noted that the decision to park off-site was that of the patron, and to impose liability upon the club for that personal choice could lead to

potential liability whenever a patron chose to park in some hazardous place, such as a structurally unsound garage.

Finally, the court considered the argument that the club had voluntarily assumed the duty by having roving employees tell patrons not to park on the lot across the road, having a private security company to assist with pedestrian traffic, and having the public address announcer instruct patrons to refrain from parking across the road. The court explained that prior cases, like *Ferreira*, also rejected the notion that occasional past voluntary measures to protect patrons somehow changed the no-duty rule.

In *Ferreira*, the church sometimes asked local police to control traffic. The court also explained that the scope of the voluntary undertakings in the past were limited and resulted in no additional duties. Moreover, the voluntary actions could be curtailed at any time.

While race promoters should be aware of and responsive to the needs of the race fans, they can take some consolation from the fact that the courts, at least in Pennsylvania, will not visit liability upon them if a fan is injured while crossing a public highway to get to or from the speedway grounds.

North Carolina's Ace Speedway Back For Sale



ALTAMAHAW, NC - Ace Speedway, a four-tenths mile asphalt speedway located near Greensboro, N.C., is for sale.

The speedway has run for the past several years as an ASA member track. Prior to that, it was a NASCAR sanctioned facility.



The track is said to have a seating capacity of 5,000 and spans 55 acres. In addition to the oval speedway, the property also has a go-kart track, a tractor pull area and a mud bog course. Ace Speedway is reportedly being offered for \$1 million.

The speedway was constructed as a dirt track. Roy Maddren headed construction when it made its debut, as a dirt track, in 1956. Originally it opened under the title 'Southern Speedway' and operated as a 1/3-mile dirt track. In 1984, it was expanded to 3/8-mile.

In 1990, Ace Speedway again went under construction. This time, it was a full-scale track conversion, transforming the dirt track into a bullring asphalt track. The ownership team the spearheaded the conversion was Fred and Jim Turner.

The new asphalt surface brought in new racing sanctions. It became a NASCAR sanctioned Winston Racing Series member track. Barry Beggarly was the first late model track champion that year, the first year as a paved oval.

In 1999, David Morton took over as the new sole Ace Speedway owner. He came in with big plans for the asphalt short track. Thus, brought the biggest change to the speedway in its 40+ year history.



The track went under its most recent surgery as new ownership moved in. New seating went up, expanding the audience capacity to 5,000. The Ace Speedway track surface was also expanded, enter the current 4/10-mile paved oval featuring 12 degree banking in the corners. That layout remains to this day.

Abraham Woidislawsky became the fourth and current owner in August 2006. He is a car mechanic turned developer turned racetrack owner operator.

Woidislawsky, a Philadelphia real estate developer bought Ace and its 51 acres for \$2.1 million in 2006.

Ace Speedway has hosted its fair share of national touring series as well. The NASCAR Whelen Southern Modified Tour hosted 7 races at the speedway. The track featured three of those races in 2005. Then, it followed with one NASCAR Modified race per year between 2006-2009.

Ace Speedway's most ignominious period came in mid-2015 when then track operator Bill Catania leased the track then left abruptly.

Left in the aftermath were a stream of unmet obligations to both competitors and the property owner.

Starting Line-Up

TONY'S SIDE: Tony Stewart's return to Sprint Car racing for the first time since 2014 happened at Bubba's Raceway Park in Ocala, FL last weekend. Stewart ultimately withdrew from the third night of competition after much stress. In an extensive Monday interview with AARN Editor Len Sammons, Stewart talks about the ill-fated Bubba's weekend and what he'll do next to keep his racing fires burning. *Focus On Speed, Page 4.*

MOD TOUR MEN TEST FOR MYRTLE BEACH NASCAR TOUR RACE: A Tour Type Modified Open Comp race last Saturday at Myrtle Beach (SC) affirmed the track's infamous abrasiveness. Race winner Doug Coby likened the race pace as being akin to "driving down side roads in Connecticut". AARN's Asphalt Mod Man Kevin Rice reports on how Coby and others plan to handle the Myrtle Beach cheese grinder at the March 18 Mod Tour race. *Southern Style, Page 16.*

NEVER EASY: Outlaw Speedway owner Tyler Siri revitalized his track in 2016 and made a lot of people happy. So it is surprising to learn that Siri had to make concessions to the municipality in which the track is situated in order to receive an operating permit for the 2017 season. AARN Dirt Mod scribe Ted Schmidt has the details. *Chasin' The Checkered, Page 25.*

OUT OF PRODUCTION: Beware the good times. That's a business credo that applies to the Ti22 Performance decision to suspend production of its GF1 Sprint Car Chassis. It's not that the GF1 isn't a well respected car, nor that its main builder, Super Sportsman ace Russ Mitten isn't a craftsman. No, this has nothing to do with domestic production and everything to do with foreign competition. AARN's Steve Barrick has the story. *AARN Exclusive, Page 5.*

MR. GO KART: That's how Dave Cordier, Sr. is being remembered. Cordier parlayed his interest in Stock Car racing at Reading into a family business, as owner and operator of Shellhammer's Speedway. Cordier wasn't the first track op - Ralph Shellhammer was - but it was Cordier and his family who popularized it. AARN Columnist Steve Bubb looks back at the life and times of Mr. Go Kart. *Bubb's Bits, Page 29.*

PROMISING NEW REGIONAL LM SERIES: Promoters getting together for the common good is a big story. During this off season, promoters at Winchester (VA), Georgetown (DE), Potomac (MD), Bedford (PA) and Delaware International (DE) created "The Battle Of The Bay". With nine races all told, a good payoff, and a series point payout, there's lots to like. AARN's Dirt Late Model Expert Doug Watson takes a close out at the details. *Maryland Dirt Clay, Page 23.*

KENNY BRIGHTBILL: Starting what might be his last season of driving competition, Kenny Brightbill spent some time recently with writer Mike Tiderman to share his memories of so many great seasons. *Tiderman's In-Depth Story, Pages 12-13.*

WHAT'S ON THE TUBE

• All Times Eastern Standard •

Thursday, February 16

3:30pm (MAVTV) - Super Cup Stock Cars - Jennerstown
6:00pm (MAVTV) - Lucas Oil Late Models
7:00pm (MAVTV) - Super Dirt Week - 358 Small-Blocks
8:00pm (MAVTV) - Madera CA Racing
9:00pm (MAVTV) - Lucas Oil Late Models
10:00pm (MAVTV) - Super Dirt Week - 358 Small-Blocks
11:00pm (MAVTV) - Madera CA Racing

Friday, February 17

5:00pm (FS1) - Cup Series Daytona 500 Practice
6:30pm (FS1) - Cup Series Daytona 500 Practice

Saturday, February 18

12:30pm (FS1) - Cup Series Practice - Daytona, FL
12:30pm (MAVTV) - Winged Nation
1:00pm (MAVTV) - ASCS Sprints
2:30pm (FS1) - Cup Series Practice - Daytona, FL
3:00pm (MAVTV) - Lucas Oil Late Models
4:00pm (FS1) - ARCA Series - Daytona, FL
4:00pm (MAVTV) - ASCS Sprints
6:00pm (MAVTV) - Lucas Oil Late Models
7:00pm (MAVTV) - ASCS Sprints
8:00pm (FS1) - Cup Series "The Clash" - Daytona, FL
10:00pm (MAVTV) - ASCS Sprints

Sunday, February 19

3:00pm (FOX) - Cup Series Daytona 500 Qualifying
8:00pm (MAVTV) - Dave Despain Show - Wayne Rainey
8:30pm (MAVTV) - Dave Despain Show - Kyle Leduc

FEATURE WINNERS

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All Star 410 Sprint: Bubba's, FL	(Thur.) DONNY SCHATZ	20
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	(Sat.) KERRY MADSEN	20
East Bay, FL	(Wed, UMP Mod) KYLE STRICKLER	12
	(Thur., UMP Mod) BUZZY ADAMS	12
	(Fri., UMP Mod) JEFF MATTHEWS	12
	(Sat., UMP Mod) JEFF MATTHEWS	12
Lake City, FL	(UMP LM) TYLER ERB	26
Lucas Oil LM: Waynesville. GA	(Fri.) BRANDON OVERTON	17
	(Sat.) JOSH RICHARDS	17
Lucas Oil LM: East Bay, FL	(Mon.) BRANDON SHEPPARD	19
Myrtle Beach, SC: Icebreaker	(Tour Type Mod) DOUG COBY	17
	(Late Model) LEE PULLIAM	17
New Smyrna, FL	(LM) JEFF CHOQUETTE (2)	28
NHRA: Pomona, CA	(Top Fuel) LEAH PRITCHETT	26
	(Funny Car) MATT HAGAN	26
	(Pro Stock) JASON LINE	26

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