



# Case Alert

## No General Liability Coverage for an Obstacle Course Race Injury

With the rise in popularity of obstacle course racing, millions have participated in races like Spartan Race, Rugged Maniac, Tough Mudder and Warrior Dash in the last ten years. Although serious injuries are rare relative to the number of participants, several notable incidents, including the collapse of the Warrior Dash obstacle “Diesel Dome” in October 2016 which resulted in the indictment of five individuals, have caused race companies and participants to question whether their insurance will cover injuries sustained during one of these extreme competitions. Insurance issues have become even more prevalent as smaller race brands and even local farms have started getting into the obstacle course racing business.

Such was the case in *Maxum Indemnity Co. v. Dirty Foot Mud Ranch, LLC*.<sup>1</sup> In *Dirty Foot*, a small race company sought defense and indemnity from its general liability insurer after a race participant sued for an injury sustained during one of its events.

Dirty Foot maintained a commercial general liability (CGL) insurance policy with Maxum Indemnity Company that contained the common general liability language:

We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages even if the allegations of the “suit” are groundless, false or fraudulent. *However, we will have no duty to defend the insured against any “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply . . .*

The policy went on to list many exclusions, including an exclusion for sports participants: “This insurance does not apply to . . . any person while participating or performing for or in any sports or athletic contest, event, or exhibition that you sponsor, including practice for such contest, event or exhibition . . .” The policy also contained an exclusion for suits related to a sporting event: “This insurance does not apply to any claim . . . which occurs while any person is preparing for, practicing for or participating in any performance, contest, sport or event.”

Based on these exclusions, Maxum filed a motion for summary judgment and the Florida District Court held that, because of the two exclusions, Maxum had no duty to defend or indemnify Dirty Foot.

Many race directors and venue owners believe they are protected because their participants sign liability waivers (jokingly referred to as “death waivers” in the gallows-humor parlance of obstacle course racing). However, these waivers vary in effectiveness from state to state, and they rarely absolve a race company of its own gross negligence. When a waiver isn’t enough, injured participants and race directors turn to insurance, unaware that most general liability insurance excludes such losses.

For race directors and venue owners, the *Dirty Foot Mud Ranch* case is a cautionary tale about the importance of having an experienced insurance attorney review all of your insurance policies, contracts, waivers and legal obligations before hosting any kind of sporting event, performance or special event. If you are hosting a race or other special event, the insurance professionals at SDV can help you make sure that your contracts and insurance policies have you covered in the event of a loss.

For more information, please contact Geoffrey J. Miller at [gjm@sdvlaw.com](mailto:gjm@sdvlaw.com) or 203-287-2112.

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