

The Mo-Hud

Knockoff



NEWSLETTER OF THE MOHAWK-HUDSON REGION SPORTS CAR CLUB OF AMERICA (MoHud)

February 2018

The REport

How about we start this month's column with an old joke? "I just flew in from Las Vegas and boy are my arms tired". But seriously, yes we did just get back from the SCCA national convention in Las Vegas and I've got a lot to report. Check this column each month and attend our next MoHud general membership meeting to read and hear about exciting new SCCA programs and initiatives.

T for two, or is it TT?

One of the biggest announcements made during the convention was the creation of a new Time Trial Nationals event that joins the ranks of the National Championship Runoffs®, Solo Nationals, RallyCross National Championship and Unites States Road Rally Challenge.

Scheduled to take place Sept. 28-30 at NCM Motorsports Park in Bowling Green, Kentucky, the Time Trial (TT) Nationals will open with a full day of track lapping sessions for testing and practice, or can be used for participants to earn their TT novice license permit.

Announcement of the TT Nationals comes on the heels of the recent rebranding of a group of activities existing between autocross and road racing. These are activities that occur on closed courses but do not involve door-to-door competition. This group of activities, which were once all bundled under the Time Trials banner, now each have a separate identity within the SCCA. Moving forward, all on-track, competitive, timed events will be branded as Time Trials (TT). Non-competitive events will be branded as Track Events (TE). Hillclimbs remain unchanged. The rebranding, however, will not impact how divisions or regions run their programs.

What do you say folks? Are there any members out there that would like to chair a time trial event? Call me or email me and let's see what we can come up with.

For the good of the sport...

Jim Buccia

Regional Executive

Coming Events: February and...

- **February:** Might be ice racing. Check out the Adirondack Motor Enthusiast Club's website < icerace.com > for status of races scheduled for Warners Lake and Lake George in February.
- **February 7:** Wednesday, 7:30pm. MoHud Membership Meeting. Orchard Tavern, 68 North Manning Boulevard, Albany. While the formal meeting starts at 7:30pm, we start gathering around 6pm to share time with our fellow members. Contact: Jim Bucci hdjimbu@gmail.com
- **April 15:** Sunday, 8-5. Tire Rack Survival School (TRSS) at Saratoga Auto Museum/ SPAC lot. Sign up as an instructor via < motorsports.reg > More info at < <http://www.streetsurvival.org> >
- **June 8-10:** Friday – Sunday. SCCA Solo Championship Tour. Sampson/ Seneca Depot, Romulus, NY. MoHud solo drivers nestled snug in their beds, visions of low PAX times dancing in their heads.
- **June 25:** Sunday. The Great Race stops overnight in Troy. Chat with John Corey (if he runs this year). Lunch stop in Bennington at the Hemmings HQ on Monday the 26th.

Still Play with Cars?

Matchbox will be 65 this Spring, and to celebrate, Lesney/Mattel will be bringing out 46 new premium castings. Of special interest to MoHud members might be castings of the Corvette Stingray, Honda S200, Datsun 510 Rally, Nissan 300ZX, MGB GT, Mazda Miata, Jaguar XK140 roadster, Ford GT 40 variations and BMW i8, for starters.



If you fancy a couple of diminutive diecasts for your desktop, the Lamley Group website will help you keep track of what's out there. < <https://lamleygroup.com> > Or just go to your closest Walmart / Target to pick popular models off the rack.

Solo Report and Awards for 2017

- Russ Burckhard

I hope everyone enjoyed the holidays and the 2017 season. Before you know it the 2018 season will be upon us and we will be back at the lot having fun with our cars and friends. For those that were unable to attend the Banquet, here is my speech recapping last year and honoring the award winners:

In 2017 we had 2 Test and Tunes, seven points events, and helped with 2 Street Survival events at SPAC.

Our average attendance increased this year from last year to an average of 59 participants at each event. We had a total of about 140 different people all together. This is an increase of 4 from last year. This year we dropped from 18 to 13 competitors that made all of the events. We had another sixteen that only missed one event. At the other end 53 only made it to one event. This is a dozen less than last year so retention is still an issue. These numbers don't tell the whole story. We had one more event than last year. Overall attendance was down. The last event we had 81 entrants. This makes the overall average appear better than it was and slightly down from last year. Hopefully we can build on our last event for next year.

I would like to thank our site owner, the McCarty Ave OGS lot. We had all 7 of our points events there plus both of our test and tunes. Just after the last event of 2016, the lot was repaved. We had to wait all winter to try it out, but it was worth the wait. The whole lot was smooth and usable.

There are a lot of people I need to thank; Our Safety Stewards are Bruce Kosakoski, Aashish Vemulapalli, Tom Moeller, Phil Reddington, and Tracey Burckhard. Miguel Teixeira, with help from Saul Morse, took care of registration at most events despite having an injured arm that preventing him from competing. Course design was great this year. Jon Kirschman started strong and improved at each event. Eric Smith and Tom Moeller continue to do a great job with Timing at the events. Eric handled the scoring part of it doing a great job getting results up quickly. Carmine Russo did a great job again as Chief of Tech. Lyndon Peck kept the events staffed as the Worker Chief. Also thanks to everyone else that has helped out with the events. I would like to thank my fellow Solo Advisory Committee members. Andy Furlong, Aashish Venamapali, Skyler Weisenburger, Bruce Kosakoski, Tom Moeller, Eric Smith, Lyndon Peck, Miguel Teixeira, and Phil Shoemaker for planning the season. Skyler moved away to Indianapolis earlier this year and Phil stepped down opening seats for Adam Wright and Russ Gorman to decide who gets the awards. Thanks Skylar and Phil for your service and welcome Adam and Russ. A special thanks to all of the competitor/workers at every event. We couldn't do it without you. We also need to thank the Board of Directors and all of our members. (Ed's note: Sammie Holmes did a nice job of taking pics at events and then posting on the MoHud Facebook site.)

This year the Novice class continued to be popular with just under 50 entrants. This is about the same as we had last year. The Street (formerly Stock) class grew about a dozen to 38 different competitors this year. The Street Touring class grew by 3 to 30 competitors this year. Street Prepared lost 2, Prepared/Modified gained 4, and Pro class added 2. CAM, Classic American Muscle, didn't grow as much as I expected with only 3 competitors this year.

Before we get to the trophies, I must thank my car owner: my wife Tracey. It is always a pleasure to co-drive with her. This year she has been ahead of me at times, but luckily for my ego I was able to pick up the pace and get back ahead. I also need to thank Jon Kirschman and Adam Wright for allowing me and Tom Taft for allowing Tracey to use their cars while ours had some "technical difficulties".

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2017 Solo Class Trophies

Street

1 st Place from BS	Scot Monti
2 nd Place from BS	Tim Frink
3 rd Place from HS	Ian Wallace
4 th Place from FS	Chris Keenan
5 th Place from BS	Sean Thompson
6 th Place from GS	Dave Cowie

Street Touring/Modified

1 st Place from STX	Tom Taft
2 nd Place from STX	Tracey Burckhard
3 rd Place from STX	Aaron Bailey
4 th Place from STR	Aashish Vemulapalli

Novice

1 st Place from NHS	Andrew Decker
2 nd Place from NAS	Ken Relation
3 rd Place from NES	Mike Scaptura
4 th Place from NCS	Blair Davis
5 th Place from NBS	Ed Molocznic
6 th Place from NES	Dave DiSanto

Prepared/Modified

1 st Place from FM	Saul Morse
2 nd Place from FM	Ian Morse
3 rd Place from BM	Mike McMullen

Street Prepared

1 st Place from CSP	Adam Wright
2 nd Place from ASP	Joe Cassidy
3 rd place from CSP	Diane Malecki

Classic American Muscle

1 st Place from CAMS	Charles Dickinson
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Kart

1 st Place from JA/KM	Johnathon Burckhard
2 nd Place from KM	Josh Smith
2 nd Place from KM	Moises Samaniego

Pro

1 st Place from XSTS	Jon Staude
2 nd Place from XEP	Andrew Furlong
3 rd Place from XBS	Phillip Redington
4 th Place from XHS	Carmine Russo
5 th Place from XDSP	Bruce Kosakoski

2017 Solo Specialty Trophies

Novice of the year

This year's Novice classes had 4 drivers that had at least 6 events. The top two drivers had 4 of the 7 Novice wins. Ken Relation was second in the Novice class despite having a rough start. He had a win, a second, 2 thirds, a 12th and a 13th. Andrew Decker had 3 of those wins, 2 thirds and a fourth making him the class champion. This year's winner averaged about 25th out of the 140 on the Pax list. Finishing his year as the Novice Champion, the 2017 Novice Driver of the Year is Andrew Decker.

Most Improved Driver

The winner for this year's Most Improved Driver had a good year last year. With 4 wins, a second place, and a third last year, he finished first in class last year. This year he started with a sixth place. Followed with 3 fourth place finishes, a third place, a fourth place at his final event. So how is that an improvement? The Pax list answers that question. Last year he had an average Pax of 19th. This year he did much better. His Pax average was 9th. While his was not the best improvement, his was the best using the same vehicle and class as last year. The difference in his finishes from last year were because he was a novice and moved up to a much harder class; this year he closed out the championship by finishing fourth in the Street class. The 2017 Most Improved Driver is Chris Keenan.

Female Driver of the Year

This year we had a total of 4 women that qualified for yearend trophies. Tracey Burckhard, Diane Malecki, Sarah Diehl, and Beverly Relyea. Tracey and Diane were the top runners again. Both had good finishes in their classes with Tracey having the lowest finish of sixth to Diane's lowest of fourth. The Pax is where you see the difference. With an average Pax finish of 24th despite using two different vehicles, The 2017 Female driver of the year is Tracey Burckhard.

Driver of the Year

This year's Driver of the Year had another banner year. We went strictly with performance this year. This guy had finished at the top of the Pax in five out of the six events he attended. The final event he was about .08 of a second out of first otherwise he would have been perfect. The 2017 Driver of the Year is Jon Staude.

Worker of the Year

As always, I wish I could give out many of these awards and not to just one person. Many people help out throughout the year and I would like to take a moment to thank everyone that has helped with the Solo program this year. This year's winner is a repeat winner. When he does his job, he takes pride in it to make sure it is done right. From set up, to tear down and even after the events he brings the broken equipment home to fix it. He is there for us to do what needs to be done. The 2017 Worker of the year is Tom Moeller.

2017 Solo Extra Awards

This year the Solo Advisory Committee decided to give out a couple of extra awards. The first one is a take on the old Cone Hunter Award. The Cone Hunter went to the participant that wound up with the highest number of downed cones that season. This year we added the most Did Not Finishes to find a winner. So because we combined the most cones with the most DNF's we needed to come up with a new name for the award. What we came up with is the...

My Course is Better award

The total number of cones hit this year was about 325. The winner of this award had 21 of them. Out of the 190 different competitors, there were 10 drivers that had at least 10 cones and they combined for over a third of all of the cones that were hit. Only 19 drivers didn't hit any cones. DNF's were a lot less with 136. Only 67 competitors had a DNF. Two competitors had 5 DNF's, five competitors had 4 DNF's, 13 competitors had 3 DNF's, 20 competitors had 2 DNF's, and 27 competitors had only 1 DNF. When we sorted the lists, two names were towards the top of both of them. One was a Novice and the other has been competing for a few years. The winner of the 2017 *My Course is Better* award is Diane Malecki.

Outstanding Performance award

The final award has been given away only once and that was back in 2006. We decided to award the Outstanding Performance award again this year. This guy was very competitive. He won his class and ranked pretty high on the Season Pax list with an eighth-place average. On the track is not the only place he excelled. When other competitors had some trouble, he stepped up on multiple occasions to help out. He also was praised by many for his work assignment as an announcer. The 2017 *Outstanding Performance* award winner is Tom Taft.

Thank you all for a great season and I look forward to seeing you all in the coming season. Congratulations again to all of the 2017 winners.

Russ



2017 Solo Awards Gallery



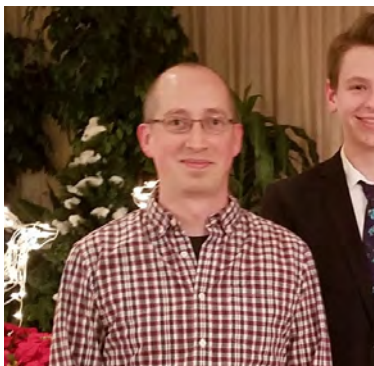
Tracey, Jonathan, Russ Burckhard - Our First Family of Autocross
They Put it Together
They Instruct
They Compete
They Win Awards



Jon Staude
Driver of the Year



Tom Moeller
Driver of the Year



Scot Monti
1st in Street



Ken Relation
2nd in Novice



Chris Keenan
4th in Street



Andrew Furlong
Rabbit Fancier



Saul Morse
1st in Modified

More 2017 Solo Awards Gallery



Phil Redington – 3rd in Pro -
was observed to have used 2nd
gear at least once in 2017



Charles Dickinson 1st in CAM
- picture is blurred because
he is always in motion



The always affable
Tom Taft
1st in Street Touring Modified



Diane Malecki 3rd in Street Prepared
and Johnathan Burckhard 1st in JA Kart
chuckle over Diane's
My Course is Better Than Your Course
Award

Think Solo is easy?

- Sometimes the cones hit back!

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Yup, There's an App for That

Digital Helpers for Solo Drivers

A few weeks ago we asked MoHud Solo drivers if they had any digital apps they relied on. Chuck Dickinson, a fearless competitor in his '01 Corvette, sent along a helpful note, as follows:

"An app I have found to be beneficial is TrackAddict Pro it cost around \$9.99 and with an WiFi or Bluetooth OBDII plug in it can track MPH, RPM, throttle and braking input along with a G meter. You can then overlay the information to your in-car video and use it to dissect and review your solo runs, and it also gives you data overlay of the course you just completed as well."

TrackAddict Pro is available for iOS devices through the Apple AppStore, and for Android via GooglePlay. As OBDII outlets have been mandatory on since 1996, use of that port is dependent on its placement in your vehicle; most manufacturers now put the port near/underneath the steering wheel.



+ This app is designed for both iPhone and iPad



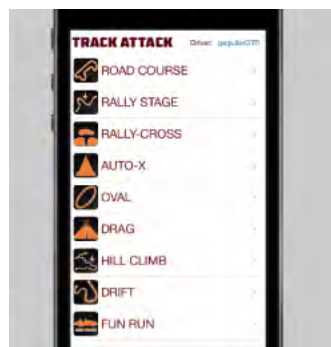
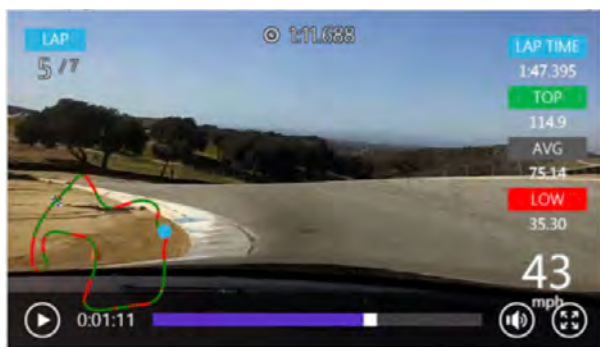
Chuck continues: "A web based magazine that is quite helpful in solo and club racing is <http://www.racershq.com/>, it is a collection of podcasts and articles from stunt driver to veteran F1 drivers giving input on how to not only be a better driver but also gain sponsorships and all aspects of being a performance driver. RacersHQ was a huge help in putting me on the right track to gaining sponsorships and growing as a driver. I think a lot of MoHud'rs could find the site useful."



Chuck at Speed; captured by Sammy Holmes

More Apps for Solo

While **TrackAddict Pro** gets the most mention as an app for Solo competition, Track Attack runs a close second. Available for iOS, Android and even Windows phones, it does basic lap timing and video recording. (14.99 for iOS).



Other apps to look at include Harry's Lap Timer (available in several levels of functionality) on iOS and Android, and Solo Storm, on Android only. Solo Storm, with its accompanying hardware, can get expensive fast, but its users love it.

And... The Solo PAX Index for 2018

SS	0.817	SSP	0.852	XP	0.884
AS	0.814	ASP	0.848	BP	0.86
BS	0.808	BSP	0.846	CP	0.847
CS	0.805	CSP	0.857	DP	0.858
DS	0.794	DSP	0.835	EP	0.85
ES	0.787	ESP	0.828	FP	0.863
FS	0.797	FSP	0.819	AM	1
GS	0.786	SSR	0.838	BM	0.956
HS	0.781	HCR	0.812	CM	0.89
HCS	0.791	CAM-C	0.816	DM	0.895
SSC	0.806	CAM-T	0.807	EM	0.894
STS	0.81	CAM-S	0.831	FM	0.904
STX	0.813	SMF	0.839	KM	0.928
STR	0.823	SM	0.853	JA	0.855
STU	0.824	SSM	0.871	JB	0.825
STP	0.815	FSAE	0.958	JC	0.718
STH	0.811				

Developed annually by Rick Ruth for SCCA and others.

Club Racing

- **The 2018 Road Racing GCR** (General Competition Rules) draft version is available for download at: scca.com/about_scca/downloads. New items are indicated by red text. Keep in mind that these change every so often, so it is best to keep on top of the latest draft.

- **NeDiv website** < nediv.com > has their 2018 calendar available in both PDF and Excel formats.

- **January** is work-on-the-car-for-next-season month. Last month we had photos of the Campbell Miatas spread out for inspection and work. This month we have a shot of roll cage being built in one of two Miatas being prepped in Bob Karl's shop.

- **Yuven Sundaramoorthy's** first win of the Formula F season came at Sebring on January 14th. Grapejuice his "bubbly" on the podium. Proud papa Gopal has posted pics and comments on the MoHud Facebook site.

- **Bob Karl's own #20** has been purchased by another MoHud member, and will have #44 on the doors this coming season.



Membership Report

Jim Garry

We have 426 members as of mid-January. That's holding steady for the past 5 months but down about 150 members since our high point in May 2017. Yes, that's one hundred and fifty. For details about this problem review last month's membership report.

Two New members since January 1, 2018

- Liam Barber, Glenmont, lists Club Racing and Solo as his interests.
- Pete Meck, Kinderhook, lists Club Racing, Pro Racing, and Rally.

Significant Anniversaries

- Tom Moeller 10 years
- John Sheridan 45 years
- Rollie Heacox 60 years

Tom received recognition for his Solo contributions earlier in this issue. Short write-ups recognizing John and Rollie follow.

Rollie Heacox – 60 years and counting with MoHud

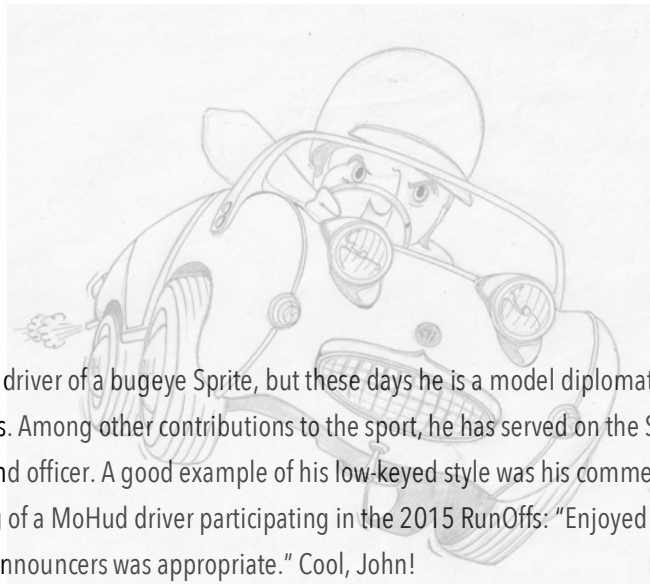
MoHud was incorporated on January 23rd, 1956, and Rollie joined up two years later in February of 1958. Known most recently for piloting a little green Miata, he has provided wheels for the next generation of MoHud racers. Cool, Rollie!



- Evan Karl and dad contemplate the work of turning Rollie's tourer into a track terror.
- Car and driver, both still green, get ready for the first run on track.
- Car and driver, now experienced racers, show off their new colors.

John Sheridan

– Celebrating 45 years for the good of the sport



John may have started out on the wild side as driver of a bug-eye Sprite, but these days he is a model diplomat and keeper of the flame for the spirit of SCCA and its roots. Among other contributions to the sport, he has served on the SCCA Board of Directors for two terms both as a member and officer. A good example of his low-keyed style was his comment in reaction to on-air commentators' uncalled-for dissing of a MoHud driver participating in the 2015 RunOffs: "Enjoyed the camera coverage, but didn't think editorializing by announcers was appropriate." Cool, John!

General Membership Meeting Minutes, January 3, 2018

Orchard Tavern, Albany, New York
Meeting called to order at 7:30 pm.

Treasurer - Paul Malecki is the new Treasurer. Paul reported that the transition to a new accounting system is complete. Paul summarized the previous month's income and expenses.

Membership - the Region now has 445 members, which includes 5 new members from the previous month.

Solo - the 2018 schedule is being worked on. Dates will need to be coordinate with TRSS, which is tentatively scheduled for 4/15 and 10/21.

Road Rally - the Highways to History rally was held in November. There were 8 entries. This included 6 new entries who had never previously participated.

Club Racing - Tom Campbell reported that Jack Hanifan will probably be home in about 10 days.

NYSRRC Awards - Jim Bucci had a 1st place finish in T4. Ron Bass had a 4th place finish in Formula Vee. Chip VanSlyke finished first in Formula F.

Lewis-McClumpha Award - Eric Smith was presented the award for 2018.

Board of Directors - next meeting will be Monday, January 29th, 7:00 pm at the Orchard Tavern.

National Convention - Jim Bucci will be attending. Membership is asked to email Jim with any issues they may want to bring to SCCA's attention.

Meeting adjourned at 8:05 pm.

- Ron Bass -

Mo-Hud Officers and Contacts

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Assistant RE

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Treasurer

Paul Malecki paulmaleckilaw@icloud.com

Secretary

Ron Bass m3apx@aol.com

Club Racing Chair / Activities Director

Jack Hanifan jackhanifan@hotmail.com

Rally Chair

Trish Bucci trimar71@gmail.com

SOLO Chair

Russ Burckhard russtduck@gmail.com

Membership Chair

Jim Garry mhr.membership@gmail.com

Chief of Pits

Clark Nicholls cwnicholls@aol.com

Scrutineering (Tech)

Open.

Contact Jim Bucci or Jack Hanifan if interested...

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Richard Alexander dweebdad@msn.com

Merchandise

Chip VanSlyke

Director

Bruce Kosakoski 518.674.8816 (H)

Director

Dick Stewart stewartco@aol.com

WebMaster

Eric "EJ" Smith ejvo8@gmail.com

NeDiv License Chair

Dick Patullo (NER) patullo@verizon.net

KnockOff

Paul Malecki paul@dianenpaulmalecki.org

For more information about the Mohawk-Hudson Region SCCA, and membership in the Sports Car Club of America, go to < <http://www.mohud-scca.org> >

Membership meetings of the Mohawk-Hudson Region SCCA are held on the 1st Wednesday of the month, excepting July and August, 7:30pm, at the Orchard Tavern, 68 North Manning Boulevard, Albany.



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The KnockOff Journal

This Month...

- *Ward v. Stewart* and Event Waivers



Is not this a lamentable thing, that of the skin of an innocent lamb should be made parchment? That parchment, being scribbled o'er, should undo a man? Some say the bee stings: but I say, 'tis the bee's wax; for I did but seal once to a thing, and I was never mine own man since.

--- The rebel Cade; speaking in Henry the Sixth, Part 2

Judge Hurd's December decision on motions for summary judgment in the *Ward v. Stewart* case has led to a lot of speculation in the automotive press and social media to the effect that waivers signed for competition are worthless. Most of the commentary is without any real understanding of the law, and none of it seems based on the decision itself. For MoHud members who are concerned, a bit of commentary follows.

First, some background. *Ward et al v. Stewart* (Northern District of New York, 7:15-cv-01023) arose from the death of Kevin A. Ward, Jr. as a consequence of being hit by a sprint car driven by Anthony "Tony" Stewart at Canandaigua Motorsports Park in August of 2014. Ward had gotten out of his car after being forced into the upper track wall by Stewart, and was apparently walking down to the inner edge of the track to communicate something to Stewart, who was still circling the track under a full course yellow. There are conflicting views on whether Stewart "gunned" his car into Ward as a response, or sped up in order to avoid Ward. It is undisputed that Stewart's car hit and killed Ward.

At issue is the question of Stewart's behavior: did he act in a negligent manner that in turn caused Ward's death? The Ward family seeks a great deal of monetary damages from Stewart on a theory of wrongful death caused by gross negligence. The case is now in Federal Court in Syracuse, overseen by Judge David N. Hurd, a judge based in Albany and familiar to any of us who practice in the Northern District. In Federal court, a cause of action based on state law is governed by "choice of law" rules first articulated in *Erie Railroad v. Tompkins* (1938); the case is governed by Federal procedure, but follows the substantive law of the state where the cause arose. Thus, we have a Federal District Court judge from Albany, sitting in Syracuse, applying the law of New York State.

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In March of 2017 Stewart moved ("asked") for summary judgment on two primary points: 1) the release (waiver) signed by all participants in the event not only excluded him from a claims judgment, but actually required the Wards to indemnify him (!) for any claims they might have; and 2) young Ward assumed the risk of being hurt by participating in the event. Ward's family cross-claimed (...the term means just like it sounds...) that summary judgment was inappropriate because of a conflict in facts of the case, and because the releases were deficient in form as signed by Stewart, and because New York law invalidated the releases as applied to the facts of the case. There was also a motion by Stewart pertaining to damages for Ward's pain and suffering, but that motion is not the concern of this note.

Summary judgment is a slam dunk. It says "there is nothing here to hear; move along." If a judge grants such a motion, the subject is dead. However, summary judgment will not be granted if the law is clearly against such a request, or if there is a material difference in the facts at issue -- as presented by the opposing parties. In real life, as opposed to TV "law" shows, you win some motions, lose others, and the case grinds on until someone decides to settle (most often) or goes to trial (and settles during trial). Very few civil cases go to the judge or jury for a verdict these days, and the trend is for even fewer of such cases going to trial each year. Google© "Pyrrhic victory" for a hint as to why.

To complicate the fact pattern, there were two basic releases, from two organizations, and there were at least two versions of each of those forms submitted to the court. The event was sanctioned and run by Empire Super Sprints ("Empire") on a track owned by Canandaigua Motorsports Park ("CMP"); each had its own release form, although both had sections where the signer released other event participants from liability for injury and damage caused by negligent actions of the organization or participants. Each release also contained a section wherein the signer acknowledged that they were participating in a dangerous activity that was not a "recreational activity."

The Empire release was typically signed pre-season by drivers and entrants individually for the season; the same form was available for on-the-spot race entrants. The CMP release took the form of a sign-in sheet for the event, with drivers and entrants adding their signatures at the track before the first race of the day.

Judge Hurd began his review by examining the Empire releases signed by the Wards and by Stewart. Both Kevin Ward Jr. and his father (as entrant) signed all such forms; there was no question as to the authenticity of the forms or the signatures. As to Stewart, there was considerable and credible testimony at depositions and hearings that suggested that he did not sign the Empire release until after the accident. This would mean that Stewart was not a party to the protection of the release, nor did he have rights to indemnification by the Wards.

The review of the CMP release indicated even more obvious problems. While the Wards had signed the master release form along with the other participants that day, Stewart and his crew chief had signed a different form, one that had fewer sections than the master form signed by the other drivers. The missing section, compared to the master form, was the section that applied to the signer as a driver; attorneys for Ward pointed out that this meant that Stewart was not eligible to be a driver, only a person allowed in certain areas (such as the pits) as a member of the team. This discrepancy would mean that Stewart was not a party to the protection of the release, nor did he have rights to indemnification by the Wards.

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Judge Hurd's opinion notes: "These disputes can be put aside, however, because plaintiffs have pointed to an independent source of state law that resolves the question of whether the Releases should apply in this case." The state law cited is General Obligations Law § 5-326. "Agreements exempting pools, gymnasiums, places of public amusement or recreation and similar establishments from liability for negligence void and unenforceable."

Every covenant, agreement or understanding in or in connection with, or collateral to, any contract, membership application, ticket of admission or similar writing, entered into between the owner or operator of any pool, gymnasium, place of amusement or recreation, or similar establishment and the user of such facilities, pursuant to which such owner or operator receives a fee or other compensation for the use of such facilities, which exempts the said owner or operator from liability for damages caused by or resulting from the negligence of the owner, operator or person in charge of such establishment, or their agents, servants or employees, shall be deemed to be void as against public policy and wholly unenforceable.

In examining the applicability of this statute, Judge Hurd reviewed two lines of cases involving claims of injuries due to negligence when participating in a sporting events where the participants signed liability releases.

One line of cases ruled that 5-326 voided the releases based on findings that the injured person *paid a fee to use the venue for recreational activities*. Another line of cases ruled that 5-326 did not apply to event workers or situations where the injured party was participating in *instructional sporting activity*. Following these lines of reasoning, a long-time motorcycle competitor who was clearly not a professional racer benefitted from 5-326 while injured during a race, while a sports car driver injured at driving school on the Watkins Glen track did not.

Applying these precedents in the Stewart case, Judge Hurd found that both Ward and Stewart paid to use the facilities, and both were there for recreational purposes. While Ward may have been a local hot-shot, his racing expenses and daily bread were paid out of his father's pocket; and it was well established that Stewart ran sprint car races more as re-enactment of his early career than as an offshoot of his (2014) NASCAR and related racing business enterprises. Based on these findings, Judge Hurd ruled that §5-326 voided all releases signed at the August 2014 event as a matter of law. Stewart's motion seeking indemnification from the Wards was denied.

Further, Judge Hurd found that "genuine factual disputes" over the accounts of the Stewart/Ward accident precluded summary judgment for Stewart on the theory of assumption of risk by Ward.

The net result of the several orders stemming from the decision is, in Judge Hurd's view, that the Ward family's "claims are best left to a jury." But keep in mind that New York remains a *comparative fault* state, so that a defendant found guilty of negligence does not mean that they are liable for all of the damages, the winning party might be found to be anywhere from 1% to 99% at comparative fault, reducing damages proportionally.

While this writer has an opinion on what that jury should decide, the purpose of this commentary is to outline what has been decided by the court to date, and to reflect on how the decisions may affect our own club, with particular emphasis on Solo Autocross events – the theme of this month's KnockOff newsletter.

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In 2017, SCCA events in New York began using a new release/waiver form developed by National. This state-specific form has an added Section 1 that differs from that used in other states.

**RELEASE AND WAIVER OF LIABILITY,
ASSUMPTION OF RISK AND INDEMNITY AGREEMENT**

DESCRIPTION AND LOCATION OF SCHEDULED EVENTS(S)	DATE RELEASE SIGNED
IN CONSIDERATION of being permitted to compete, or officiate, observe, work for, or participate in any way in SCCA OR SCCA PRO SANCTIONED EVENTS and/or being permitted to enter for any purpose any RESTRICTED AREA(S) (defined to be any area which requires special authorization, credentials, or permission to enter or any area to which admission by the general public is restricted or prohibited), I, for myself, my personal representatives, heirs, and next of kin:	
<ol style="list-style-type: none">1. State that I am a driver, mechanic, pitcrew or other team member, or other participant engaged in racing, and I am not participating in the EVENT(S) or entering the RESTRICTED AREA for recreational purposes.2. Acknowledge, agree, and represent that I have or will immediately upon entering any of such RESTRICTED AREAS, and will continuously thereafter, inspect the RESTRICTED AREAS which I enter, and I further agree and warrant that, if at any time, I am in or about RESTRICTED AREAS and I feel anything to be unsafe, I will immediately advise the officials of such and if necessary will leave the RESTRICTED AREAS.	

It should be pointed out that signing an SCCA "Release and Waiver..." form at a sanctioned event is a requirement for bringing the signer under the umbrella of insurance that includes both personal injury benefits and the all-important benefit of being defended against claims of negligence where the signer is acting within the event rules.

The primary purpose of a release/ waiver is not to prevent a lawsuit, but to win it by having a court agree that you are not liable for damages claimed by someone else. Sometimes that defensive move can take oblique turns. The April 2017 KnockOff pointed out that the "recreational" phrase in the SCCA form seeks to overcome General Obligations Law §9-103 which protects landowners from lawsuits arising from the recreational use of their land. The phrase benefits insured SCCA event participants by enabling the insurance carrier to stand in the place of an injured participant, saving the SCCA member litigation costs. The April KO note did not address the applicability of the "recreational" phrase in General Obligations Law §5-326, as that issue was still before the Stewart court. Judge Hurd's subsequent decision changes nothing: sometimes a release will be affirmed, and sometimes a release will be voided – it all depends on the circumstances.

Looking then at the way MoHud runs its biggest program, Solo autocross, are the SCCA waivers effective in the light of §5-326? Only a court case will give a definitive answer, but we can make some educated guesses.

The first question in regard to §5-326 involves a determination of payment to an owner, or operator as an agent, for then use of a recreational facility. If the facility – in most cases a parking lot – is owned by a third party such as the State, and no fee is paid to the State or other owner, is the entry fee paid for an SCCA event at the facility for the use of that facility or for something else such as the organization and guidance of the sponsoring SCCA affiliate? At a glance it does not appear that such specific question has been decided by the courts; extended research and application of relevant caselaw may or may not suggest a rule.

Assuming that a court would rule that a Solo program on the land of another, even without payment to the owner, is encompassed by §5-326, are participants engaged in a recreational activity? The analysis in Stewart would suggest that no participant in a Regional Solo event could be deemed a professional. But that is not the end of the inquiry.

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As Judge Hurd has observed, the key to whether §5-326 applies in a particular instance is the determination as to the nature of the activity: is it *recreational* or *instructional*?

This writer suggests that MoHud Solo events are *instructional* in nature.

The basic aims of MoHud, stated in its incorporation papers, are to encourage ownership, maintenance and safe driving of sportscars. In part, our Solo program furthers these aims by instructing participants -- as part of the pre-event technical inspection process -- how to maintain of a high degree of vehicle fitness.

That is a good beginning, but more central to any claim that our Solo program is *instructional* in nature is the easily observed evidence that driver instruction in the control of their car is an integral and ongoing component of every event. Such activities as "walking the course" with commentary and advice by a Solo expert; offering the services of instructors to both observe and to demonstrate progress over the course in entrants' own cars or in the cars of the instructors; plus the MoHud tradition of entrants advising each other on best practices during an event -- all demonstrate the instructional nature of the events.

Such circumstances would arguably line up with fact patterns where courts have found releases/waivers to be enforceable, notwithstanding §5-326. Quite the opposite of *Ward v. Stewart*.

To sum up: an important lesson to be gleaned from Judge Hurd's December opinion in *Ward v. Stewart* is that for the protection of all, the traditional SCCA/MoHud practice of having event participants sign well-worded releases/waivers as part of each Solo event's registration procedures should be strictly followed.

The foregoing may not be interpreted as legal advice; it is intended merely as a topical discussion of law; it is not intended to review all aspects of litigation arising from the incident discussed. The answer to any question in law is: "it depends" on the facts and circumstances of the case. Publication of the foregoing in the KnockOff Journal does not constitute endorsement by the Mohawk-Hudson Region, SCCA national, nor any of their agents. - PaulM., Editor.



January is the Cruellest Month

Warren Miller

Dan Gurney

They showed us that there is beauty in speed, and that gentle humor makes life all the sweeter.

Thanks, guys.

