

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 3, 1998

**Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin**

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-2178

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**JOSEPH LOIZZO, BY JOHN HOULIHAN, HIS GUARDIAN
AD LITEM, DONA LOIZZO, PEGGY S. FOLTZ, RYAN
ENSLEY, BY JOHN HOULIHAN, HIS GUARDIAN AD
LITEM, JOHN ENSLEY, CHERYL ENSLEY, MATTHEW
BENNETT, BY JOHN HOULIHAN, HIS GUARDIAN AD
LITEM, KAREN BENNETT AND DEAN BENNETT,**

PLAINTIFFS-APPELLANTS,

V.

**WOLFHEAD SPORTSMAN'S CLUB, WESTERN HERITAGE
INSURANCE COMPANY, SHORT COURSE OFF ROAD
DRIVERS ASSOC. INC., ALIAS INSURANCE COMPANY
NUMBER ONE, PETER KOWATSCH, AND ALIAS INSURANCE
COMPANY NUMBER TWO,**

DEFENDANTS,

SPHERE DRAKE INSURANCE COMPANY,

**INTERVENING DEFENDANT-
RESPONDENT.**

APPEAL from an order of the circuit court for Oneida County:
ROBERT E. KINNEY, Judge. *Affirmed.*

Before Cane, P.J., Myse and Hoover, JJ.

PER CURIAM. Spectators injured at a September 3, 1995 automobile race appeal a summary judgment in their personal injury lawsuit against the Short Course Off Road Drivers Assoc., Inc. (SODA). SODA officially sanctioned the September 3, 1995 race, in addition to helping arrange and conduct various aspects of it. Sphere Drake Insurance Company, SODA's liability insurer, intervened in the spectators' lawsuit against SODA. Sphere Drake sought a declaratory judgment that it had no duty to defend or indemnify SODA for liability arising from the September 3, 1995 race. The trial court ruled that Sphere Drake had no duty to defend or indemnify SODA against the spectators' personal injury lawsuit. It concluded that the Sphere Drake policy unambiguously conditioned liability coverage for an individual automobile race on the prior issuance of a specific policy endorsement granting coverage for that race. SODA had never sought such an endorsement for the September 3, 1995 race.

On appeal, the spectators argue that the trial court misread the Sphere Drake policy. They argue that the policy expressly provided coverage for all SODA's automobile races and that the trial court misapplied the policy in a way that did little more than effect Sphere Drake's peculiar subjective interpretation. In response, Sphere Drake supports the trial court's decision and argues that the spectators lack standing to appeal the issue of its duties to defend and indemnify SODA. The trial court correctly granted summary judgment if there was no dispute of material fact and Sphere Drake deserved judgment as a matter of law. *See Powalka v. State Life Mut. Assur. Co.*, 53 Wis.2d 513, 518,

192 N.W.2d 852, 854 (1972). We conclude that the trial court correctly read the Sphere Drake policy as unambiguously absolving it of any duty to defend and indemnify SODA for liability from the September 3, 1995 automobile race. We reject the spectators’ substantive arguments and affirm the summary judgment.

We conclude that the Sphere Drake policy was not ambiguous. It permitted only one interpretation, *see Schroeder v. Blue Cross & Blue Shield*, 153 Wis.2d 165, 173, 450 N.W.2d 470, 473 (Ct. App. 1989), and we therefore apply the its plain meaning. *See Olguin v. Allstate Ins. Co.*, 71 Wis.2d 160, 165, 237 N.W.2d 694, 697 (1976). Here, the policy displays no ambiguity regarding coverage for spectator liability for automobile races. It provides that “only those dates endorsed will be covered” and that “each race will be underwritten for safety and/or the race particulars.” These words indisputably show what activates SODA’s liability coverage: Sphere Drake incurs no liability for any particular race unless SODA has first obtained Sphere Drake’s separate liability endorsement for that race. This process rested on good and sufficient reasons. It gave Sphere Drake the ability to examine in advance the unique risks of each race and the race’s overall fitness for underwriting. SODA never sought such an underwriting endorsement for the September 3, 1995 race and therefore had no liability coverage for that race.¹

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.

¹ We have assumed, without deciding, that the spectators have standing to raise the coverage issue in this appeal. We may ignore threshold questions like standing when a controversy’s substantive merits are adverse to the party claiming standing. *See Edwards v. Carter*, 580 F.2d 1055, 1056-57 (D.C. Cir. 1978); *see also Secretary of the Navy v. Avrech*, 418 U.S. 676, 677-78 (1974).

