



**ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY**



**CHARLES PHELPS v. FIREBIRD RACEWAY, INC.,
No. CV-04-0114-PR**

PARTIES/COUNSEL:

Petitioner: Plaintiff/appellant Phelps, represented by David L. Abney, of Skousen, Skousen, Gulbrandsen & Patience.

Respondent: Defendant/appellee Firebird Raceway, represented by Jay A. Fradkin and John J. Egbert, of Jennings, Strouss & Salmon.

Amicus curiae: Arizona Trial Lawyers Association, represented by Thomas L. Hudson and Taylor C. Young, of Osborn Maledon, and JoJene E. Mills, of Piccarreta & Davis; the Law Offices of Charles Brewer, represented by Charles M. Brewer, John B. Brewer, and Dane L. Wood.

FACTS:

In order to participate in a drag race at Firebird Raceway, Plaintiff Charles Phelps signed a “Release and Covenant Not to Sue” and a “Release and Waiver of Liability, Assumption or Risk, and Indemnity Agreement.” During the race, Phelps’s car crashed into a wall and was engulfed by fire. He was severely burned. He alleges that Firebird Raceway was negligent in rescuing him and rendering medical aid. In the documents he signed, Phelps expressly recognized that Firebird might be negligent in these respects and he expressly assumed that risk, waived any liability on the part of Firebird, and covenanted not to sue.

The trial court granted summary judgment to Firebird on the basis of the release and waiver. The court of appeals affirmed. The only issue discussed was whether Article 18, § 5 of the Arizona Constitution required the jury to decide whether to apply the written release and waiver.

ISSUE:

Under Article 18, § 5 of the Arizona Constitution are the enforceability and validity of written express assumptions of risk (“releases”) exclusively issues for a jury to decide?

Constitutional provision:

Article 18, § 5 of the Arizona Constitution provides: “The defense of contributory negligence or of assumption of risk shall, in all cases whatsoever, be a question of fact and shall, at all times, be left to the jury.”

This Summary was prepared by the Arizona Supreme Court Staff Attorney’s Office solely for educational purposes. It should not be considered official commentary by the court or any member thereof or part of any brief, memorandum or

other pleading filed in this case.
