



California Sports Law Update

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WAIVERS AND RELEASES INSULATE SCHOOLS AND ATHLETIC ORGANIZATIONS FROM SOME BUT NOT ALL CLAIMS OF NEGLIGENCE

What do schools, soccer leagues, karate studios, and sports facility owners have in common? They and other similar groups face potential liability arising from serious personal injury to athletic participants. And due to the relatively frequent occurrence of injury related to participation in vigorous sporting events, it is essential for these organizations to have effective waivers and releases executed by the athletes.

The use of waivers by schools, sports leagues or athletic associations is an effective way of insulating themselves from claims of negligence and personal injury. However, waiver and release of liability forms are not “magic wands” eliminating all potential claims as was demonstrated in a very recent California Court of Appeal decision. (Rosencrans v. Dover Images, Ltd. [2011] No. ED 49899, Fourth District, Division Two)

Rosencrans involved an experienced, 38-year old motocross rider plaintiff who sustained personal injuries at a California racetrack while participating in a race. The defendant track owner required all riders to execute a “Release and Waiver of liability Assumption of Risk and Indemnity Agreement” upon arrival at the track. The release contained typed language: “I HAVE READ THIS RELEASE” in the area where Rosencrans signed his name.

After arriving at the track with his motorcycle, Rosencrans claimed he was given a clipboard containing the release and was advised to “just sign in.” The “signing in” process occurred within 10 seconds of his arrival at the track and took all of 30 seconds to complete. Shortly after signing the document, Rosencrans fell upon completing an ascent on a ramp on the track. Rosencrans sustained severe personal injuries when he was struck by other riders while obscured from view on the opposite side of the ramp. Amongst Rosencrans’ allegations were that his injuries occurred in an area when a “caution flagger” would normally have stood to warn riders of exactly the situation he found himself. In this case, the flagger was absent at the time of the incident.

The trial court evaluated the claims and granted defendant’s Motion for Summary Judgment finding that:

1. The release was enforceable;
2. The racetrack’s conduct did not rise to the level of gross negligence;
3. Rosencrans assumed the risk by participating in the sport of motocross.

Division Two of the Fourth Appellate District opined on the waiver/release issue. Since Rosencrans was not forced to sign the release nor denied an opportunity to read it before signing, he waived his right to sue the racetrack for ordinary negligence and negligent hiring and supervision. It should also be noted that release contained specific language that Rosencrans waived his right to sue.

The Appellate Court also examined the duty of care of the racetrack in a situation involving an inherently dangerous sport and its assertion that Rosencrans voluntarily assumed the risk associated with participation. The Court of Appeal relied on prior case law which held that when a plaintiff chooses to participate in a sport with inherent risks, the defendant is relieved of the duty to use due care to avoid the plaintiff sustaining an injury as a result of one of the risks of the sport. (Knight v. Jewett (1992) 3 Cal. 4th 296) The rationale is that imposing such a duty would require that an integral part of the sport be abandoned or discourage vigorous participation in the sport.

The Court examined the sport of motocross and ruled that the racetrack did have the duty of minimizing the unique and extreme risk of a co-participant crashing into a rider who had fallen on the track. The Court reasoned that the use of a flagger warning system did not discourage vigorous participation in the sport; rather, it just provided information to riders so they could alter their routes accordingly. After reviewing a safety expert's opinion offered by the plaintiff concerning the need to have a "safety flagger" at the site of the incident (again, a spot where a fallen rider would be obscured from view), the Court ruled the lack of the flagger fell greatly below the standard of care in the industry. In other words, Rosencrans created a triable issue of fact as to whether the defendant's failure to provide a flagger constituted an "extreme departure from the ordinary standard of care" or gross negligence.

In sum, the Court ruled that the trial judge properly disposed of plaintiff's claim for ordinary negligence, but erred in finding that no triable issue of fact existed as to the claim of gross negligence.

The lessons to be learned from the Court's decision can be summarized as follows:

1. An athletic or sporting association needs to provide participants with a clear opportunity to read and sign a release that contains language that the participant waives his/her right to sue.
2. Even with the executed release, a host of a sporting event is not relieved of his or her duty to avoid gross negligence or an "extreme departure" from ordinary care. While this language is somewhat general, the host should consider use of safeguards for unique risks that do not discourage normal, vigorous participation in the sport.
3. Use common sense in evaluating the risks unique to your activity. Engage in an evaluation of the following areas:
 - (a) Does my field, court, studio or track pose any risk that can be mitigated by a simple task (e.g., warning signage; moving a bleacher, padded walls);
 - (b) Are there unique aspects to my activity that justify a precaution and do not discourage vigorous participation (e.g., protective headgear, appropriate access to medical services);

- (c) Have you experienced incidents in your sport that have resulted in injury that have put you on notice that specific precautionary action should be taken;
- (d) Speak to others in your industry about what they do to protect against catastrophic injuries. Industry standards of safety are not necessarily only established by written warnings or rules. Common practices can quickly become informal rules and safety requirements especially when their use becomes widespread.

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