

***Kim v. County of Monterey* (Dec. 12, 2019, No. H045577) Cal.App.5th [2019 Cal. App. LEXIS 1242]**
Defendants' staging of a racing event created a triable issue of material fact because a reasonable jury could find that the staging created a risk beyond the inherent risks of the sport.

FACTS/PROCEDURE

The Laguna Seca Raceway is a racing track owned by Monterey County and the Sports Car Racing Association of the Monterey Peninsula ("SCRAMP"). The raceway often hosts professional and amateur racing events. For professional events, racing tracks must follow safety standards promulgated by the Fédération Internationale de Mocyclusime ("FIM"). These regulations govern verges and run-off areas of a track. Verges and run-off areas are safety zones located outside of the established track which allow riders to regain control or decelerate when necessary. Under the FIM, such areas must be "completely flat without any type of obstruction." At the Laguna Seca Raceway, however, sandbags were frequently placed in these safety areas to prevent rain erosion. Since SCAMP's vice president was aware of this potential violation, sandbags were removed for professional events but only removed for amateur events by request.

On March 14, 2015, appellant Daniel Kee-Young Kim, Jr. attended an amateur racing event at the Laguna Seca Raceway. Prior to racing, appellant signed a waiver and release form. During his 10th or 15th lap around the track, appellant rode outside of the track and collided with unmarked sandbags in the safety zone. As a result of his injuries, appellant brought suit against the County for a dangerous condition of public property pursuant to Gov. Code section 835 and SCRAMP for gross negligence. Defendants moved for summary judgment on all causes of action, alleging that the primary assumption of risk doctrine ("PAR") precluded liability, which the trial court granted. Appellant appealed on the ground that sandbags in the safety zones substantially increased the risk of injury beyond the inherent risks of the sport.

HOLDING/DISCUSSION

The Court of Appeal for the Sixth District reversed and remanded. Under section 835, a plaintiff must prove the defendant committed a negligent act that created a dangerous condition. If a plaintiff is unable to establish a cause of action under ordinary negligence, a claim for gross negligence will likewise fail. Under the PAR doctrine, a defendant is not liable for injuries arising from risks inherent to the sport. If a defendant substantially increases the level of risk, however, the defendant is no longer precluded from liability. Here, plaintiff alleged defendants substantially increased the risks by placing unmarked sandbags in the designated safety zones. Defendants contended that the sandbags did not create an additional risk because the sandbags were generally visible and have been used for decades to control erosion. Moreover, defendants were not required to remove sandbags for amateur events because FIM safety standards are only applicable to professional races. As long as defendants removed the sandbags for all professional events, they did not have to implement alternative, safer methods of drainage. The court rejected defendants' argument, finding that industry practices, such as the FIM standards, even when not directly applicable, may inform a fact finder on the issue of breach. A reasonable jury could also consider other relevant facts to determine the level of risk, such as the costs associated with implementing a new drainage system, the visibility of the sandbags from the track, or the weather conditions. The court also noted that as a first-class raceway, a jury could find defendants were contractually obligated to operate the raceway in accordance with FIM safety standards. Based on the evidence presented, the court held that triable issues of fact existed with respect to both causes of action.