

The Assumption of Risk Doctrine Is Being Bumped Out of California

Product Liability Advisory

By Matthew Stein

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Assumption of risk continues to take bumps and bruises, as a recent ruling by the California Court of Appeal further narrowed the scope of this affirmative defense.

In *Nalwa v. Cedar Fair*, Dr. Smriti Nalwa, a surgeon, took her children to the Great America Amusement Park in 2005. While riding in a bumper car, Nalwa's car was struck by other cars from the front and rear. In reaction to the head-on bump, Nalwa put her hand on the dashboard, fracturing her wrist.

The trial court determined that Nalwa "assumed the risk" of injuries arising from this activity, as she chose to engage in the ride and the injury arose from a risk inherent in the nature of that ride. On appeal, the Court addressed broadly the circumstances under which an amusement park owner can be held liable for such a personal injury, and, more specifically, whether an exception to the primary assumption of risk defense should apply.

In these determinations, the Court of Appeal looked to the record of injuries on the Great America Rue Le Dodge bumper car ride. Of the 600,000 riders during the 2004—2005 operating seasons, only 55 injuries were reported, with only one fracture suffered by Nalwa. The Court also found, however, that Great America had altered the bumper car rides in four other amusement parks, requiring the cars to move in a circular pattern, as opposed to random directions, thereby minimizing the likelihood of head-on collisions.

Emphasizing that Great America could and did take steps to "eliminate or reduce the likelihood of head-on collisions at every other park prior to appellant's injury," a divided Court of Appeal ultimately determined that the assumption of the risk doctrine did not apply. "The very reason we go on amusement park rides is because we seek the illusion of danger while being assured of a ride's actual safety. The rider expects to be surprised and perhaps even frightened, but not hurt."

In a dissenting opinion, Justice Wendy Park Duffy latched onto the obvious – you can't have a bumper car without bumps. "Nalwa participated in the Rue Le Dodge ride knowing that she would be jostled about in her car as a result of bumping into other cars. The sole purpose of a bumper car ride is to enjoy the experience and thrill of minor-impact bumping. The name of the game is to bump and to attempt to avoid (often unsuccessfully) being bumped." On these grounds, Justice Duffy found the matter to fall squarely within the assumption of risk doctrine.

Whether or not this decision signals a more generally stated exception to the doctrine, barring application of the assumption of the risk defense to amusement park rides overall, it is certain that the trend remains steadily against this previously powerful defense.

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