



Weekly Law Resume

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Edited by David Blinn and Mark Hazelwood



WEEKLY LAW RESUME™

Issue By: MICHAEL BEUSELINCK

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Negligence-Assumption of Risk

Robert Amezcua, et al. v Los Angeles Harley-Davidson

Court of Appeal, Second District (October 27, 2011)

This case involves a claim against a Los Angeles Harley-Davidson dealership that organized a parade of motorcycle riders. Two injured riders did not sign a release form or register for the event. The Court of Appeal addressed whether such a negligence cause of action was barred by the primary assumption of risk doctrine.

The 2006 Pursuit for Kids Toy Drive ("Toy Ride") was a motorcycle parade ride that began at a Harley-Davidson dealership. The Los Angeles County Police Department provided escort services for the Toy Ride every year. No one from Harley-Davidson escorted the ride. Participants could pre-register or register immediately before the ride at the Harley-Davidson dealership where the Toy Ride began. Registration included signing a release form that Harley-Davidson used for all annual Toy Rides, where participants expressly agreed to assume the entire risk of any accident or personal injury (except willful neglect) suffered as a result of participating in the event.

Robert Amezcua was an experienced motorcyclist and participated in dozens of organized motorcycle rides, including several prior Toy Rides organized by Harley-Davidson. In the past, he had registered to participate in Harley-Davidson organized Toy Rides, including signing the release form. This time, however, he chose to ride in the Toy Ride without registering or signing the release.

There were fewer than 250 motorcycles in the procession. The motorcycles proceeded to Harbor UCLA Medical Center in Torrance, along a route that included the 105 and 110 Freeways. Robert Amezcua was driving, and Nancy Amezcua, his wife, was seated behind him when they left the dealership toward the rear of the procession. They remained in that

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position throughout the ride. All of the motorcycles in the procession stayed in one lane on the freeways. A van driver traveling in an adjacent lane was distracted by the roar of 15-20 motorcycles behind him. The van hit a vehicle in front of him and also collided with the Amezcuas. The Amezcuas sued Los Angeles Harley-Davidson for damages arising from their injuries.

Harley-Davidson sought summary judgment on various theories, including that the claims were barred by the assumption of risk doctrine. The trial court granted summary judgment in favor of Harley-Davidson on this theory, holding that Harley-Davidson owed no duty to the Amezcuas. The Amezcuas appealed.

The Amezcuas argued that (1) the doctrine applies only where there is a written exculpatory agreement between the parties; and (2) the doctrine applies only to sporting events, and the Toy Ride was not a sporting event. The Court of Appeal did not find either argument persuasive.

The Court of Appeal affirmed the trial court's grant of summary judgment. It concluded that the primary assumption of risk doctrine is a complete bar to the Amezcuas' claims.

The Court noted that an assumption of risk may be express or implied. The Court explained that implied primary assumption of risk is founded not on an express agreement, but on the nature of the activity and the relationship of the parties to that activity. Whether the Amezcuas signed the release agreement was not determinative of whether the implied primary assumption of risk doctrine applied.

In primary assumption of risk cases, the defendant has no duty to protect the plaintiff from a particular risk and the plaintiff's recovery against the defendant is completely barred. The Court found no case that considered primary assumption of risk in connection with organized, noncompetitive, recreational motorcycle riding. However, the Court concluded that such activity falls within those activities as to which the primary assumption of risk has been found to apply. It involves physical exertion and athletic risk, and is also more similar to an organized bicycle ride. The risk of being involved in a traffic collision while riding in a motorcycle procession on a Los Angeles freeway is apparent.

The Court also determined that Harley-Davidson did nothing to increase the risks inherent in the activity. Specifically, the Court concluded that traffic slowing and other drivers not paying attention are inherent risks of riding in an organized motorcycle ride on public highways. Nothing that Harley-Davidson did or did not do increased these risks. Nor was there

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evidence that anything less than closing the freeway to other traffic would have mitigated the inherent danger of riding in an organized motorcycle ride. But to close the freeways to other traffic during the ride would alter the parade-like nature of riding in a motorcycle procession on a public highway.

COMMENT

This case is the Court of Appeals' first application of the implied primary assumption of risk doctrine to organized, noncompetitive, recreational motorcycle riding, and it expands the scope of the doctrine to recreational motorcycling.

For a copy of the complete decision see:

[HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/B224748.PDF](http://www.courtinfo.ca.gov/opinions/documents/B224748.pdf)

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