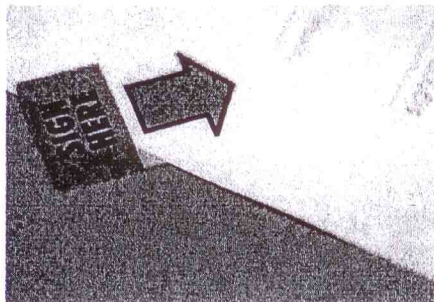


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**A SIGNED
RELEASE DOES
NOT BLOCK
CLAIMS OF GROSS
NEGLIGENCE**

In *Rosencrans v. Dover Images, Ltd.* (2011) 192 Cal.App.4th1072, 38-year-old Jerid Rosencrans was injured at Starwest Motocross Track in June 2007. When he arrived at the Track, a Starwest employee gave him a clipboard with a nine-paragraph document entitled, "Release and Waiver of Liability Assumption of Risk and Indemnity Agreement." Before being admitted to the Track, patrons were required to sign their names over the words "I HAVE READ THIS RELEASE." After 30 seconds, Rosencrans signed the Release and entered the Track.

About 30 minutes later, Rosencrans fell on the downslope of a ramp, landing outside of the view of other riders. Rosencrans was then struck by two riders within 60 seconds of his fall. Although a "caution flagger" was supposed to be present to notify participants if a rider was down, there was no caution flagger at the platform next to the location of Rosencrans' fall. Instead, Rosencrans saw a flagger running toward him from the far end of the track.

Rosencrans and his wife sued Starwest's parent company, Dover Images, Ltd., for negligence, negligent training and supervision, and loss of consortium. The trial court awarded summary

Congratulations!

Congratulations to Lena J. Marderosian, Esq. and Arnold S. Levine, Esq. for the recent dismissal of the case of June Techer vs. The Bascom Group, LLC, Plantasia, Inc., et al. Plaintiff claimed that she suffered personal injury and personal property loss as a result of the various actions of the defendants which occurred during the renovation construction performed at the her apartment complex. She claimed she had incurred over \$56,000 in medical expenses and over \$250,000 in property damage. Plaintiff's complaint was dismissed after she was unable to allege any viable cause of action against our client, even after having been given multiple opportunities to do so by the court. Plaintiff appealed and the Court of Appeal affirmed in part and reversed in part. Once the case was sent back to the trial court, we again successfully challenged plaintiff's complaint and the case was dismissed, with prejudice, for a second and final time.

judgment for Dover, based on the Release. Rosencrans appealed, claiming that the Release was unenforceable for several reasons, including that he did not know he was signing a release, and was not given adequate opportunity to read its terms.

The Court of Appeal found that the Release was valid. Because there was nothing preventing Rosencrans from taking the time to read the release at the Entrance, he was *not* denied a reasonable opportunity to discover its actual terms. Because “reasonable diligence requires a party to read a contract before signing it,” Rosencrans waived his right to sue Dover for ordinary negligence and negligent hiring and supervision.

However, the Court still held that a jury might still find “gross negligence” by Dover. Gross negligence is defined as either “a want of even scant care” or “an extreme departure from the ordinary standard of conduct.” An owner or operator of a sports facility has a legal duty to provide “a reasonably safe course or track,” and to “minimize the risks without altering the nature of the sport.” A warning system such as caution flaggers is one way to meet this duty.

However, Rosencrans provided a declaration by a safety expert who stated that (1) the common practice is to have caution flaggers at assigned posts at all times when a track is in use, and (2) the lack of a flagger near the accident was “inexcusable, a blatant disregard for riders’ safety...” With this evidence, “a jury could find that having only one caution flagger was an extreme departure from the ordinary standard of care.” The trial court ruling for Dover was reversed.

A signed release can be an effective defense against “ordinary” negligence and negligent hiring claims. However, this does not mean that a business can completely ignore the standard of conduct in its own field, as “an extreme departure” from such standard will trigger concerns over gross negligence. A business must be sure to conform to the standards of care in its own industry, rather than pin all of its hopes to a standard release.

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