

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONTEREY**

Daniel Kim, Jr.

Plaintiff(s)/Petitioner(s)

vs

County of Monterey, et al.

Defendant(s)/Respondent(s)

Case No.: 16CV001236

STATEMENT OF DECISION

On March 14, 2015, Plaintiff Daniel Kim was injured while participating in a winter season ‘track day’ held at Laguna Seca Raceway in Monterey County, California. The raceway is owned by the Defendant County of Monterey (“County”) and at the time of the incident was operated and managed by Defendant Sports Car Racing Association of the Monterey Peninsula (“SCRAMP”) since approximately 1957. The property on which the track is located was previously owned by the U.S. Army as part of the former Fort Ord and deeded to the County in approximately 1974. The track is part of the Laguna Seca Recreation Area, Monterey County Department of Parks and Recreation.

Mr. Kim crashed when he struck one or more sandbags after he lost control of his motorcycle and ran off the track at approximately 70 MPH. The sandbags had been placed by SCRAMP personnel off the track surface as a safety measure, configured to prevent erosion debris from entering the track surface. Mr. Kim testified he remembered nothing about the incident other than seeing the sandbag just before striking it. Video footage of the incident was recorded by a rear facing camera mounted on the motorcycle of a riding instructor ahead of Plaintiff.

The track day at issue was an event for amateur motorcycle riders conducted by Keigwin's@thetrack ("Keigwin's). Keigwin's was named as a Defendant in this matter and dismissed during the course of jury selection at trial. Keigwin's rented the track from SCRAMP for this track day¹.

SCRAMP had a concession agreement with the County under which SCRAMP paid a portion of funds (80%) it received for track rentals to the County. That 80% money was to go into a track maintenance fund. Under the concession agreement, County and SCRAMP jointly shared maintenance responsibilities, but in practice SCRAMP operated and maintained the track and would request money from the County for repairs and maintenance. SCRAMP did not control the track maintenance funds, however; County did. County, for its part, in practice relied upon SCRAMP to tell County what repairs or maintenance needed to be performed at the track.

Track days are held at various racetracks throughout California and elsewhere. They provide an opportunity for riders (and drivers, for car track days) to develop and improve their riding skills in a relatively safe environment. There was much testimony reciting references to a 'safe environment' contained in the Keigwin's, Laguna Seca Raceway and Thunderhill (another race track in Northern California) websites. Safety in this context is a relative term and cannot reasonably be viewed in a vacuum. Driving at high speed always involves a level of dangerous risk. Riding a motorcycle involves additional danger because motorcycles move on only two wheels, and, unlike an automobile, there is no 'cage' of protection around the rider. Riders, such as Plaintiff here, often push the limits of their abilities. Speeds at the Keigwin's track days at Laguna Seca Raceway were frequently in the 70-mph range, and according to Jesse Carter's testimony (Keigwin's Vice President of Operations and former instructor at Keigwin's) were not supposed to exceed 140 mph for a Keigwin's track day. There was other testimony that generally there are no speed limits at the Laguna Seca Raceway track itself.

¹ Once Keigwin's was dismissed, jury was then waived by the remaining parties for the liability phase of the bifurcated trial. Plaintiff had signed a release of liability before commencing with this track day. Because of that, the doctrine of primary assumption of the risk, and Government Code section 831.7, respectively, all parties agreed that, pursuant to the directives of the Court of Appeal, in order to establish liability Plaintiff needed to prove that Defendants had unreasonably increased a risk inherent in the activity or unreasonably failed to minimize a risk not inherent in the activity, and were grossly negligent in doing so.

In addition to Laguna Seca Raceway, Keigwin's also held track days at the Thunderhill, Buttonwillow, and Sonoma race tracks in California, as well as at four out-of-state racetracks.

Track days serve an important function in providing an area off public streets and highways for riders to improve their skills.

For its motorcycle track days, Keigwin's provides instructors for the participants. Participants are required to provide their own leather riding suits and helmets. The skill level of participants ranges from beginners to very skilled and experienced riders. Participants are placed in one of three different groups according to skill and experience level. The participants designate their own group levels, but if a Keigwin's instructor observes a participant in a class which does not appear to match the rider's skill level, he will pull the rider in and move him/her to another group.

A primary objective of track riders is to drive on the paved track surface along an imaginary 'line' through a turn, in order to maximize the speed with which the vehicle can negotiate the turn. This line is sometimes referred to as the 'race line.' The wider the arc a rider can take through a turn, the faster the rider can go through the turn. The faster the rider can negotiate the turn, the more quickly he/she can complete a lap of the track. Riders can go off the track during a corner for a variety of reasons, not the least of which is rider error. Mistakes resulting in riders departing the track are not uncommon. These include entering the turn at too great a speed, insufficiently steering into the turn ('taking the turn too wide'), accelerating too soon after entering the turn, failing to apply proper braking while entering the turn, and failure of the motorcycle rider to lean properly while in the turn. Any of these can increase the arc of the line which the rider takes through a turn and consequently the vehicle will go off the track surface.

As Jesse Carter, Executive Vice President of Operations for Keigwin's and an experienced motorcycle instructor, explained credibly, there are areas alongside a track surface where one expects riders will go off-track and other areas where one does not expect riders will go off-track, although the latter can still occur. These differences were taken into account in the design of the Laguna Seca Raceway track and in the placement of sandbags.

The presence of debris on the paved track surface itself is extremely dangerous, especially with a motorcycle going through a turn at high speed. As one witness put it, if riders hit any kind of sand, rock, debris or water, ‘they’re going over’. When ‘on the marbles,’ as it is sometimes called, one loses traction and control of the vehicle.

The Court specifically finds that the track surface – the paved asphalt portion on which it is intended that riders or drivers will travel -- is unquestionably the foremost safety consideration for track safety, and that measures reasonably need to be taken alongside the track to prevent erosion debris from entering the track surface, even though such a measure might present some risk off the track to a rider or driver who leaves the track unintentionally. Photos presented as evidence in this trial demonstrate that there was erosion outside the track surface in the Turn 5 area where Mr. Kim went off the track. The sandbags used here were effective in keeping the debris from such erosion off the track surface. There was credible testimony regarding the design, purpose and functionality of the drainage system in place at Laguna Seca Raceway on the date of Mr. Kim’s incident. All were reasonable, as was track maintenance. Before each track day session, SCRAMP’s Laguna Seca Raceway maintenance crew swept the track surface.

Jesse Carter, an instructor for Keigwin’s since 2007, testified that a ‘good portion’ of those motorcycle riders who go off track ‘go down’ – i.e., crash -- though only a small portion of those suffer significant injuries. Lance Keigwin, former owner of Keigwin’s and an experienced motorcycle rider and instructor himself, estimated that at Laguna Seca Raceway track days riders ‘lose’ the track and go off the track twice a day.

The Court finds that going off track and crashing or ‘going down’ on a motorcycle and being injured is an inherent risk of a track day whether on or off track, especially at the relatively high speeds driven.

Plaintiff was an experienced motorcycle rider who had previously crashed and gone off track at Laguna Seca Raceway. He was well aware of these risks.

The evidence at trial shows that racetrack course patterns differ, as do the areas immediately surrounding the edges of the tracks and what lies beyond. There is not uniformity of the off-track areas adjacent to racetracks, though for certain types of major events requirements are imposed for such events by the organizations which sanction those events.

Along the edges of the paved track (which is bordered by painted white lines similar to those painted along the edges of a road or freeway) surface of race tracks is a shoulder area. At that shoulder, along turns, is a rippled or corrugated surface of concrete, usually painted red and white or blue and white, in a checkered pattern. This area is sometimes referred to as a concrete curb and was occasionally referred to during the trial as an ‘alligator’ area. It has a somewhat corrugated surface to alert the rider he/she is at the edge of the track and about to enter an unpaved area. The concrete curb does not extend around the entire circumference of the track.

There are many solid objects or barriers along the perimeters of racetracks – such as walls, tire stacks, fences and bridges – with which a rider or driver can collide after leaving the track. Lance Keigwin credibly testified that a track day environment can never be completely free of obstacles; there will always be something that a rider can hit.

Beyond the corrugated shoulder of a race track’s concrete curb are placed ‘runoff areas’ in locations where riders are likely to leave the track. Defense expert David Vodden, who designed and has managed Thunderhill race track in Northern California for many years, testified that runoffs are placed along the paved surface of a racetrack where possible. Like the concrete curbs, runoff areas do not surround the entire perimeter of the track. The objective of a runoff area is to provide a place where an errant rider leaving the track can lessen speed and the attendant consequences of crashing. Runoffs are placed at locations where it is likely that a rider will go off-track. There are, however, areas where it is possible for a rider to leave the track which are not runoff areas.

The composition of a runoff surface area can vary; the purpose of the runoff area is in part to slow the speed of the errant vehicle so that it does not collide with a wall or a tree. Some of the runoff areas at Laguna Seca Raceway have gravel beds; two others have paved asphalt surfaces; the other runoff areas have native, natural soil. Sanctioning bodies’ inspectors determined where the Laguna Seca Raceway runoff areas are placed and whether they are of gravel or native soil. The runoff areas had been increased over the years preceding Mr. Kim’s accident. The gravel beds in the runoff areas at Laguna Seca Raceway are defined by gravel 18 inches deep. Gravel beds slow a vehicle significantly, by as much as one half its speed. Jesse Carter’s testimony that even the dirt in the runoff areas is designed to slow the progress of a

vehicle when it leaves the track surface is credible. Unlike the paved track surface, a runoff area is not smooth.

Runoff areas are not foolproof and do not guarantee that a crash will not occur. Objects or obstructions in a runoff area could be hit by a rider and cause injury. Where Plaintiff left the track at Turn 5 was just beyond the gravel pit runoff area of Turn 5.

Plaintiff's expert Robert Barnard described a runoff area as the ground 'between a verge [discussed below] and the first line of protection', the strong barrier like a wall which would eventually stop the vehicle. A runoff can be of differing sizes depending upon a number factors such as speed and likely direction of travel. Its purpose is to halt or reduce speed of the vehicle and minimize impact with any barrier – i.e., a crash.

Mr. Barnard opined that a runoff area needs to be smooth and level, although it need not be as smooth as the verge. He did not actually know the length of the Turn 5 runoff as of March 14, 2015 nor the length of the gravel trap at Turn 5.

Plaintiff's expert Robert Barnard, a race track designer and promoter, referred to a somewhat imprecisely defined area off the track called a 'verge,' which he described as an area 6½ to 10 feet wide and the first piece of non-asphalt track a rider encounters when leaving the track. This would, if taken literally, include the concrete curb, although in context it appears he did not intend it to be included within his description or definition of a 'verge.' Mr. Barnard opined that a verge should go all the way around the track circumference – though that is not possible at Laguna Seca Raceway, as he conceded, because the bridge between Turns 5 and 6 is in the area he would have a 'verge.' The Federation Internationale de Motorcyclisme ("FIM") standards proposed by Plaintiff's expert define 'verges' as 'the outer parts of the transversal profile of the track.' Mr. Barnard opined that a 'verge' area should exist between the concrete curb and the runoff area, under FIM rules, and that the verge and runoff areas should be kept completely free and clear of any obstructions.

Defense expert David Vodden, an experienced racer and track manager of California racetrack Thunderhill for the past nearly 30 years, has never heard of the term 'verge' in reference to a race track prior to Mr. Barnard's use of it in this case.

The term ‘verge’ is peculiar to the FIM, and its dimensions are not precisely or consistently defined. Additionally, as discussed further below, the FIM ‘verge,’ although employed by SCRAMP at Laguna Seca Raceway for FIM-sanctioned events conducted during the non-rainy ‘pro’ season, is not a generally accepted standard and does not apply to non-FIM-sanctioned events, regardless of whether those events may be held at a track which periodically put in place measures for FIM-sanctioned events. It was reasonable for the Defendants not to employ FIM guidelines to rainy season track days at Laguna Seca Raceway.

Laguna Seca Raceway is an internationally known track where several major spectator events have been held yearly for decades. It is in a rural setting. The track itself is paved, 2.237 or 2.38 miles long, and has 11 consecutively numbered turns. The normal direction of travel around the track is counterclockwise. A portion of the track lies at the bottom of a bowl-shaped basin (starting at Turn 11, through the straightaway after Turn 4). The remaining portion (Turns 5 through 10) goes uphill, culminating at Turn 8 (the top of the Corkscrew), and then back downhill. It is surrounded by open land, with trees. Gillian Campbell, the Chief Executive Officer and General Manager of SCRAMP since December 17, 2001, described Laguna Seca Raceway as one of the top 10 road courses in the world. In promotional materials, SCRAMP described it as a ‘world class’ race track. Ms. Campbell categorized the events run at Laguna Seca Raceway into major events which have spectators, and minor, or non-spectator events.

Among the major motor racing events held at Laguna Seca Raceway over the years are professional motorcycle races sanctioned by the FIM an international motorsports sanctioning body. This track day was not such an event, and it had no connection whatsoever to the FIM or any other professional level race organization.

One of the most prominent features of Laguna Seca Raceway is its elevation changes, at the highest point of which is a double-turn (Turns 8 and 8A) known as The Corkscrew.

Before reaching the Corkscrew, track riders or drivers travel uphill on the paved surface of the track. The uphill portion starts at Turn 5 and continues uphill through Turns 6 and 7. Upon entering the Corkscrew, they travel downhill on the track surface toward Turns 9, 10 and 11 at progressively lower elevations.

Because of the elevation of the Corkscrew, rainfall at the track drains downhill either side of that turn. In the area before the top of the Corkscrew, it drains downhill toward Turns 5, 6 and 7. Turn 5 is at the foot of this hill. In the area beyond the Corkscrew, it drains in the direction of Turns 9, 10 and 11.

The rainy winter season at Laguna Seca Raceway runs from after the last major race in October through April or May. There are significant differences in the track conditions at Laguna Seca Raceway for the winter rainy season and the ‘pro’ non-rainy season. They are due to rainfall and drainage. These necessitate changes in the area adjoining the track in order to keep the track surface safe during the rainy season, as well as to prevent formation of ruts or trenches in which an off-track wheel would be caught and flip a vehicle. The changes, which include uncovering drains, removing dirt from gutters (‘V-ditches’) and placing sandbags to channel water into drains and away from the track surface and edges, take weeks to put in place at the beginning of each winter season and weeks again to remove at the beginning of the ‘pro’ season. Those seasonal changes are not the consequence of a ‘haphazard’ drainage system, but the result of an engineered, well-thought out and effective system which was monitored on a daily basis for track surface safety.

The native soil at Laguna Seca Raceway along the track erodes quite easily when it rains. During the pro season at Laguna Seca Raceway, it very seldom rains, and erosion is not a significant problem.

The area going uphill from Turn 5 (where Mr. Kim crashed) to Turn 6 historically has presented a drainage challenge, not only because of its downhill slope but also because that runoff area slopes toward – instead of away from - the track. This slope in the runoff area was placed at the direction of the FIM, to slow vehicles departing the track, and inspected by FIM inspectors after completion. That trackward slope is the opposite of what would be desired for drainage away from the track surface. There are 3 grate-covered drain boxes between Turns 5 and 6, to remove drainage. The sandbag or sandbags into which Plaintiff ran had been placed and configured to channel runoff into one of these drains and away from the track’s paved surface.

Richard Lee, an engineer who designed racetracks in Europe, was the director of site development for Laguna Seca Raceway.

Prior to the early 1980's there was minimal drainage control at Laguna Seca Raceway. Indy Car racing came to Laguna Seca Raceway in 1983. Mr. Lee worked closely with Championship Auto Racing Teams ("CART") and Indy Car in designing the track at Laguna Seca Raceway. Starting around 1988, drainage improvements were made at the time of a major track redesign. This included, among other things, dredging and reducing in surface area a dry lake (Laguna Seca Raceway means 'dry lake'), putting in a silt field to eliminate silt from culverts, and installing a large pipeline beneath the track area to channel water into the lake area. The drainage system to control the flow of water and erosion materials was designed by local engineer Lee and local engineer Ken Whitson and was upgraded over the years preceding this incident. As part of this system, there were slotted drain grates (as noted above) placed overlying drain boxes where runoff water, mud, silt and other erosion debris were collected.

Bohdan "Bo" Beresiwsky, currently retired, was employed by SCRAMP as Vice-President of Facility Operations for Laguna Seca Raceway at the time of the Plaintiff's crash. Mr. Beresiwsky was in charge of maintenance. He had worked in the maintenance of Laguna Seca Raceway track from its relative infancy in the mid -1970's --- when only he and his boss were the maintenance people and the only buildings were four old army barracks -- until he retired in 2017, approximately 2 years after this incident. He oversaw track maintenance and any work to be done at the track. He worked with all the sanctioning bodies for track events. He is extremely knowledgeable about the topography of the track, weather, and the effects of the latter on the former. The Court finds him to be an honest, highly believable witness. He lived only 3 miles from the track and saw the variations in weather patterns which occur in that area. He testified that what might appear to be a relatively small amount of rainfall could create serious erosion problems at the track. He also noted that weather predictions -- as opposed to after-the-fact rainfall measurements --- played a role in his decision when to place and remove the sandbags and put in place other winter season precautions.

Mr. Beresiwsky supervised track construction, putting it out to bid, selecting the contractors and overseeing the project on a daily basis. In years following the early 1980's, concrete V-ditches (resembling concrete street gutters) and additional drain boxes leading to the

lake were added. Mr. Whitson prepared the designs; Mr. Beresiwsky worked closely with him and supervised the construction.

The concrete 'V-ditches' (gutters) are open and uncovered during the rainy season, to divert water. Both FIM and its automobile equivalent, Fédération Internationale de l'Automobile ("FIA") approved the plans for construction of the V-ditches and drains in advance of the work.

When changes were made to the track itself, drainage was taken into account and alternatives to sandbags were considered. For example, when sanctioning bodies wanted widened runoff areas between Turns 6 and 8 (uphill from Turn 5), which in turn necessitated cutting back the bank and moving the block walls back, that doubled the surface area for rainfall to wash and carry erosion debris downhill. Whitson Engineering designed changes to the drainage system which included adding slotted drains, more concrete V-ditches and underground culverts. Those changes lessened -- though did not eliminate -- the need for sandbags at that location, as well as reduced erosion.

Laguna Seca Raceway has used sandbags during the winter rainy season for years to prevent erosion debris from entering the track surface and from creating ruts or trenches alongside the track surface. The sandbags were placed at several locations around the track. Without the sandbags to channel water flow into the drains and away from the track, mud and rock flowed across the track at Turns 5, 2, 6, 8, 8A and 10, there would also be huge washouts, approximately 1-2 feet wide and 1½ feet deep. Mr. Beresiwsky has seen a moving vehicle's tire become stuck in such a trench and flip the vehicle over. He made the conscious decision that without sandbags the erosion danger would be greater than the presence of sandbags. That was a reasonable judgment call.

Most of the approximately 500 sandbags placed around the track are near the track. There are specific areas where Mr. Beresiwsky knows water will flow. On occasion a flow will change, and readjustment is required. The position of sandbags around the drains does not change, however. Mr. Beresiwsky determined the locations for placement of the sandbags and had consulted with Mr. Lee the engineer and track designer before placing them. He placed them in areas where bikes and cars normally do not go off track, while at the same time keeping the track surface itself as free as possible from debris, water, mud and rock. Riders tend to go off track at

the same locations. The Court notes that defense expert Mr. Fatzinger was careful to state that his opinion is not that the sandbags which Mr. Kim hit were in a runoff area or area where it was likely a rider would leave the track, but rather were in an area where a rider could go off the track².

Sandbags are used to control erosion runoff at other racetracks in California as well. Thunderhill raceway uses them during the period from October and May, to control water and erosion debris runoff from entering the track surface. It has employed them as close as 5 feet from the track surface.

FIM Inspector Claude Denis, with whom Mr. Beresiwsky worked each year from 2005 to 2013, and the FIM Chief Inspector/FIA Chief Safety Steward Charlie Whiting each visited and inspected the Laguna Seca Raceway track during the off season and observed the winter track conditions, including the sandbags. None ever complained about the track's use of sandbags or any other winter conditions or mentioned them as a point of concern. Nor did Plaintiff's expert Mr. Barnard prior to this case, although in prior years he also had visited the track and saw the winter conditions, including the sandbags.

There was no credible or admissible evidence that any rider actually has ever crashed and been injured at Laguna Seca Raceway (or any other track) as a result of hitting a sandbag³.

² Mr. Barnard testified to a variety of measures which he suggested could be used in lieu of sandbags to control erosion – such as slotted drains [Laguna Seca Raceway in fact already has them in place at multiple locations, including three in the area where Plaintiff's crash occurred], French drains, paving the entire area along the outside of a turn, or 'intercepting' the water – providing no information regarding the feasibility of installing or cost of such items. However, he has never inspected the drainage system at Laguna Seca Raceway; he acknowledged that it has 'bad soil and bad slopes.' He said that in order to design a 'fix' for drainage at Laguna Seca Raceway, someone would need to do an analysis – but he wasn't asked to and didn't. Actually, as shown in testimony and photos at trial, there are drains in the Turn 5 area off track. The sandbags which Mr. Kim struck and crashed were configured to direct water and erosion material to the drain.

³ There was no evidence that a motorcycle rider had ever hit a sandbag. Of all the percipient and expert witnesses testifying, none were aware of a prior such incident. There was evidence, admitted for purposes of notice only, that many years before there was a suit filed claiming a motorcycle rider had crashed by hitting a sandbag. However, this was not admitted to prove such an incident did occur, and the Court's in limine motion review of the deposition testimony of the individual involved disclosed the rider's version of the incident to be lacking foundation of personal knowledge and highly unreliable. Additionally, it disclosed that the rider's crash was at a different location on the track. The evidentiary value of that suit on the issue of notice is marginal. There is no showing that an investigation of the claimed basis for the suit would have disclosed any condition which would have been found to be unreasonably dangerous or necessitating change. The evidence does not show that any failure to investigate by SCRAM or County in any respect had any causal connection to this incident.

Although as to Laguna Seca Raceway this lack of prior history evidence was limited to the period from 2000 onward because of a discovery ruling by the Court, it is nonetheless persuasive evidence. The paucity of accidents with sandbags was not simply the result of luck.

There was no evidence that anyone ever requested the removal of sandbags for safety reasons. There were one or two instances where a track renter requested sandbags be removed near Turn 10, on the other side of the track from where Plaintiff crashed, for reasons not shown at trial. The 'winter conditions' were well-known to track renters -- that includes Mr. Kim, who had himself had personally rented the track twice during the winter season. No track renter ever notified SCRAMP that the use of sandbags was a safety concern.

There was no negligence on the part of SCRAMP or County arising from the use of sandbags. It is an acceptable form of erosion control and violates no industry standards or norms. The placement of the sandbags at selected areas around the track, including at Turn 5, was integrated with an engineered drainage system and was reasonable. There is a significant risk inherent with high speed motorcycle riding/racing from erosion debris or runoff on the track surface. The use of the sandbags here was clearly directed to, and did, minimize that risk effectively. In retrospect, it could be said that the presence of the sandbags to reduce on-track risk did increase the risk of crash off-track in the sense that Plaintiff's crash might not have occurred without the sandbags. But under the circumstances it was not a significant increase in risk, it was not an unreasonable increase in risk, and was not the product of gross negligence.

The Defendants' conduct in the design and operation of Laguna Seca Raceway was far from the want of any care or an extreme departure from the standard of care.

The design of the runoff areas and of erosion control were well planned. The placement and dimensions of the gravel bed, installation of a special curb and relocation of the concrete wall at Turn 5 were all specified by FIM.

Mr. Lee made calculations to determine speeds and where runoff areas and gravel beds would be. Mr. Beresiwsky worked closely with him. He also worked closely with local engineer Ken Whitson, who was the engineer most involved with site improvements, starting with the redesign of the track in 1987-1988 period to increase its length from 1.9 miles to 2.237 miles, up until Mr. Beresiwsky retired in 2017.

The locations of the concrete curbs were selected by FIM and served the purpose of keeping the drivers from going over the white line.

Mr. Beresiwsky dealt with many race sanctioning bodies, and the track was inspected on a yearly basis by various sanctioning bodies.

Mr. Beresiwsky worked for decades with engineers and race sanctioning bodies (including Indy Cars, CART, Trans-Am, FIA and FIM) inspectors and Chief Stewards to develop and improve safety at the track prior to Mr. Kim's crash. The track was inspected on a yearly basis by race sanctioning bodies. Mr. Beresiwsky also worked with rider and driver representatives from FIA, IndyCar, FIM, CART, International Motor Sports Association ("IMSA") and Trans-Am. He knew the track soil and its behavior well. He traveled to other racetracks in other countries such as Holland, Germany, and Spain to meet with track safety inspectors to see what safety improvements they wished be made at Laguna Seca Raceway. He worked with County in installing and updating the drainage system and improvements. He received and followed input from the sanctioning body inspectors and engineers, and supervised construction. He worked directly with FIM inspectors for each inspection by FIM.

He has consulted with motorcycle experts at every inspection, and he also met with the riders' representatives about safety issues.

After IndyCar came to Laguna Seca in 1983, at the end of each race year their representatives met with Mr. Beresiwsky to discuss track safety; following those discussions, improvements were made to the track, such as replacing sandpits with gravel bed and corrugated guardrails to concrete block walls; adding catch fencing; widening runoff areas. Extension of the pit lane, which in turn involved extending the straightaway; these took place over the period 1983 until IndyCar stopped running. All were made prior to Plaintiff's crash. The statements by SCRAMP to the effect that the track benefitted from FIM homologation and has evolved safety standards were true.

Removing the sandbags from around the track would normally take the SCRAMP maintenance crew two weeks.

There are no industry written standards for race track maintenance. The concession agreement between County and SCRAMP provides that SCRAMP is to maintain the concession

premises and improvements in a first-class manner. Viewing the evidence and credible witness testimony as a whole, the Court finds that SCRAMP did maintain the track and adjoining surfaces as required by the agreement.

During the professional season, the V-ditches are filled in, drain openings are covered and sandbags are removed. It takes a crew about 2 weeks to make this conversion at the beginning and end of each pro season. An example of the necessity of the winter season setup is that when it does rain during the pro season when the V-ditches and drains are covered, it is necessary to bring in a crew with sweepers and a water truck to clean off the track. If rainfall happens during a race event, a crew works through the night to clean the track up. Normally, on a regular day to day basis, SCRAMP would not have all the equipment and outside contractors on site to perform these tasks. The dirt in the filled in V-ditches and absence of drains would create an unsafe mess on the track when there is erosion from rain but no drainage.

Maintenance of the drains was done, on a daily basis by SCRAMP. The silt field is cleaned out yearly.

The metal slotted drain openings lie atop concrete drain boxes. Two or three times each rainy season, the drain boxes are cleaned out and a specialized company using a high-pressure hose would flush out the drains and culverts to permit the water flow through the underground system.

Even with the sandbags in place, some erosion occurs.

Before a track day starts, the SCRAMP crew spends three hours maintaining (sweeping the track and checking its surface). It did so on the date of Mr. Kim's accident.

Part of the SCRAMP maintenance crew's daily protocol was to check and see if any sandbags had been hit. If hit, they would be replaced. It is definitely more common for a car to hit a sandbag than for a motorcycle to do so. Mr. Beresiwsky was not aware that any motorcycle had ever hit a sandbag prior to Plaintiff's incident.

After the last race of the pro season, which was typically in October, SCRAMP's maintenance crew would start clearing out the V-ditches putting out the sandbags. It is not practical to take out sandbags and replace them on a daily basis. It would not be reasonable to expect Defendants to do so. The process of putting out sandbags and removing sandbags takes a

crew approximately 2 weeks. It was not negligent for SCRAMP to have not removed the sandbags simply because days had passed since the last rain.

Plaintiff's collision.

Plaintiff entered Turn 5 at a speed too high, with an incorrect lean angle and not sufficient braking to maintain the line.

He also accelerated during the turn, in an effort to pass the rider ahead of him.

Defense expert Pridmore, an experienced motorcycle racer and track day school operator who had run riding schools at Laguna Seca Raceway for 15-20 years, said he had never seen a rider lose a line in an arc that wide before viewing the video of Plaintiff's crash.

Plaintiff left the track beyond the Turn 5 gravel trap area which had been placed according to the directives of the FIM, and he ran into a sandbag or sandbags which were placed alongside the track at that location to prevent water and erosion debris from entering the track surface. As noted above, Plaintiff's expert Mr. Fatzinger stated that it is not his opinion that the sandbags were in a runoff area, nor that they were in an area where it was likely a rider would go off the track, but rather that they were in a place where a rider could go off the track.

All drivers on racetracks should look at and evaluate the track surface, the reference points for turning and braking, where the runoffs are and how they look, as standard procedure. Warm up laps are for that purpose.

Plaintiff was a very experienced rider and very familiar with riding the Laguna Seca Raceway track at high speeds.

The sandbags at Turn 5 were visible. Testimony about the post-impact appearance or visibility of the sandbags in the location where Plaintiff crashed is of marginal, if any, probative value because of the amount of dirt stirred up by Plaintiff's crash. Likewise, testimony about the appearance of the sandbags from a still photo frame from the video of Plaintiff's crash is of limited usefulness. As noted previously, Plaintiff had himself personally rented the track on two prior occasions during the winter season when sandbags were in place. Plaintiff was familiar enough with the track that he skipped the driver's meeting held by Keigwin's earlier on the morning of his crash. Warning him about the sandbags' presence would have served no purpose or avoided the collision. It would not likely have changed his actions.

Defense expert Mr. Fatzinger believes Plaintiff left the track because of either target fixation or misjudging the turn. He did not calculate Plaintiff's speed at any portion of the track and did not calculate his lean angle. He cannot say why Plaintiff left the track. Other experts also testified that Plaintiff probably was looking in direction on the track which he wished to travel, and not off to the sides of the track. There was also expert testimony that Plaintiff's field of view as he came up behind the rider he was attempting to pass at the time of the crash was so limited that he could not have seen the sandbags at that point. The Court finds that this is significant with respect to Plaintiff's claims that warning cones should have been placed near the sandbags. Cones would simply have increased the number of objects which Plaintiff could hit.

It is important not to lose sight of the fact that Plaintiff had lost control of his motorcycle when he departed the track. The efficacy of warnings presumes that the rider would be able to control the vehicle to take evasive action; that point had been passed when Plaintiff entered the corner too quickly.

Narrowing the path of travel by placing cones on the track surface would have fundamentally changed the nature of the track day, because the object was to take the turns in the widest arc possible around the course and decrease lap times; there were sandbags at multiple turns around the course. Furthermore, it would present the risk of the motorcycle striking the cone at high speed on the track surface itself. In short, that would not have been realistic.

Failure to inspect the track.

Much testimony was offered by Plaintiff regarding inspection duties and failure to inspect as a basis for liability. Failure to inspect is significant only if the inspection would have revealed a hazard which reasonably could and should have been cured. Placement of sandbags involves a judgment call about balancing elimination of the risk of debris on the primary area where drivers are intended to ride – the track surface – against risks posed by areas where riders are likely to go off the track and areas where riders are not likely to leave the track: as Mr. Vodden testified, '[i]t's a trade-off.' Each presents a unique consideration. The point at which Plaintiff departed the track was not a likely area for a rider to do so. The sandbag or sandbags which Mr. Kim struck had been placed in an area reasonably thought not to present a risk of injury. An

inspection of that specific off-track area earlier in the day would simply have shown the sandbags were where they were supposed to be.

Applicability of FIM standards.

The only person to testify that FIM standards for track adjacent surface conditions applied to the track day was Plaintiff's expert Robert Barnard. The FIM homologates, or licenses, a track for an event. It does not license all track activities at a given location.

Mr. Barnard opined that there are no written industry standards for race track maintenance and, in the absence of such, the 'industry standard' for conditions of the verge and runoff areas at a racetrack are those specified by the FIM. SCRAMP did host FIM events (the MotoGP) at Laguna Seca Raceway over the years, and its conditions were examined by FIM-licensed stewards at times during the winter season at Laguna Seca Raceway when sandbags were present. Mr. Barnard did concede that there are some racetracks in the United States with no verges or runoffs at all. Some racetrack safety measures mandated by the FIM for its sanctioned events are only temporary in nature – such as air fences and fire-resistant-wrapped straw bales.

Essentially, Mr. Barnard opined that because Laguna Seca Raceway has hosted some major international FIM-sanctioned motorcycle events with professional drivers, it should maintain the area surrounding the track surface for an amateur track day in the same condition mandated by the FIM for its sanctioned events. There are significant differences, however. FIM-sanctioned events such as the MotoGP have no speed limits. The FIM does not license or regulate motorcycle track days. There was credible testimony that FIM standards are only guidelines, that they are 'negotiated' rather than rigid requirements, and that they are not uniformly required even for FIM events. Unlike track days, FIM sponsored events involve what Mr. Barnard agreed is an enormous amount of preparation.

There was abundant, credible testimony that the FIM standards do not apply to track days.

The parties stipulated to the testimony of William Cumbow, which included the following: William Cumbow is the Director of International Competition for the American Motorcycle Association ("AMA"), a member of the circuit racing commission and bureau

member for the FIM as well as the permanent steward of MotoGP races in the United States with the duty to ensure that racetracks are prepared for FIM events and meet the necessary requirements for sanctioned events. He has served as a clerk of the course or as FIM steward for every FIM Grand Prix and Superbike event held at Laguna Seca Raceway since 2005. His opinion is that track day events are not FIM-sanctioned events, and the Keigwin's event in question was not. The FIA does not homologate circuits for track day events or enforce FIM standards for track day events. In his opinion, there is no requirement that homologated circuits be kept in compliance with FIM standards except during a sanctioned race. Nor have the FIM or AMA issued any statements or policies with respect to what happens at non-FIM sanctioned events. Mr. Cumbow does not express any opinions on what standards should be applied to race circuit owners or managers or to track days. A circuit owner is not prohibited from, and may elect to, keep a track in compliance with FIM standards even though not required. If there were sandbags in the area as they appeared in Mr. Kim's incident, that would not be acceptable for an FIM-sanctioned event because any elevation can cause a motorcycle going off track at high speed [not defined] to be launched and become airborne.

Plaintiff's expert Mr. Fatzinger testified he had no opinion whether FIM standards apply to track days. Defense expert David Vodden testified they do not, and that the FIM standards are not uniformly followed even by FIM itself.

The Court is not persuaded that FIM standards or guidelines apply to events which are not FIM sanctioned events, or that a different standard applies to tracks which hold track days and occasionally hold FIM-sanctioned events and those which do not. Mr. Barnard holds no licenses issued by the FIM, although that organization does issue licenses. He has never held a position with the FIM, consulted for it or been asked to review any of its standards. He has never actually ridden a motorcycle on the Laguna Seca Raceway track despite having promoted one of the FIM-sanctioned MotoGP events there, stated that it does not matter in his opinion what time of year an event is conducted (i.e., rainy season or not), and indicated an apparent indifference to whether a rider was likely to go off the track at a given spot in determining where a runoff area should be located ('the fact that no one has run off at a location before doesn't matter to me as a designer.').

Much of Plaintiff's claim that Laguna Seca Raceway should have maintained the track at all times in a condition required by FIM standards is based upon promotional material referring to itself as a 'world class' racetrack and having 'benefited from FIM homologation.' Both statements are true, but neither carried with it the application of FIM standards to non-FIM events.

Defense expert Mr. Rene Castaneda testified that the sandbags in the group which Mr. Kim struck were 'as close as' 4 feet from the outer edge of the 'alligator'/concrete curb. Then he testified that the sandbag which Plaintiff hit was in the area from the outer edge of the grate (which according to his testimony was on a concrete frame the edge of which was 6'11" from the outer edge of the concrete curb) to as far as 3 feet from the concrete frame for the grate (which would be approximately 3'11", or four feet). This means the sandbag which Plaintiff hit may or may not have been in the 6 to 8 foot 'verge' which Mr. Barnard opined should be free from all obstructions. The evidence does not preponderate in favor of a finding that, even if FIM 'verge' standards applied, the sandbags ran afoul of them.

The Court is not persuaded that consulting with a soils engineer would have been fruitful. The properties of the soil, which consists primarily of highly erosive granite, with clay in the lake bed and paddock area and sandy soil in the Turn 9 area, were known to Mr. Beresivsky and the engineers with whom he worked. They had developed and built a reasonable, workable and effective system to deal with the soil, topography inherent in the track, and erosion. The system was maintained at all times relevant here.

Although there is evidence that SCRAM had financial difficulties which hampered its ability to manage the track, the Court finds no causal connection between SCRAM's finances and the crash of Mr. Kim. The drainage measures in place at Turn 5 were appropriate and were not an extreme departure from the any standard of care or from the exercise of ordinary care.

Likewise, the Mazda capital improvements contract under which money was allocated for certain capital improvements did not involve drainage. It listed certain improvements which were not shown to have any connection to or influence on the track drainage system.

The evidence in this action shows that while runoff areas should generally be free and clear from obstructions, this is not always possible or practical. Runoff areas are not always well-

defined. The particular circumstances and physical setting of a given track may require some compromise or accommodation even in a runoff area.

Plaintiff has argued that the rainy season was over by March 14, 2015 when the incident here happened. The fact that it may actually have rained only on two days in March prior to Plaintiff's crash does not mean that the rainy season should have been deemed concluded by the track personnel. Rain in this area often does occur in March – even during the days of March 3, 4 and 5 during this trial; as well as on March 19 and 28, as the Court was drafting this decision. Evidence that there was no rainfall on a given date does not mean rainfall was not predicted.

'Grading' the areas adjoining the track at Turn 5 would not have alleviated the need for sandbags during the winter season.

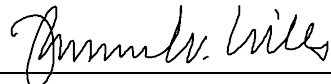
In summary, and for the reasons set forth above, the Court finds that there was neither gross nor ordinary negligence on the part of Defendants SCRAM and County of Monterey which contributed to Plaintiff's harm.

There was no extreme departure by either defendant from what a reasonably careful person would do in the same situation to prevent harm to others. Nor was there a failure to exercise any care. There was no failure by either defendant to exercise reasonable care in any respect of the design, maintenance, operation, or inspection of the track or its surroundings; and no causal connection existed between any failure to warn, to inspect the track surroundings or to investigate prior crashes and Plaintiff's collision. Neither defendant unreasonably increased a risk to Plaintiff over and above risks inherent in the activity of a track day; and neither defendant unreasonably failed to minimize risks not inherent in the activity or unreasonably exposed Plaintiff to an increased risk of harm. There was no causal connection between any lack of financial oversight, lack of financial management, or any financial problems, on the part of either defendant and Plaintiff's collision. In view of the above, the Court need not find, or assess any percentage to, comparative fault on the part of Plaintiff.

This shall serve as the Court's statement of decision on the liability phase of the bifurcated trial, subject to any objections which may be filed by the parties.

This matter is set for status conference and discussion regarding further proceedings, including calendaring of any future hearings and preparation of any judgment, on Thursday, May 19, 2022 at 8:30 a.m. in Department 15.

Dated: April 6 , 2022



Thomas W. Wills
Judge of the Superior Court

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CERTIFICATE OF MAILING
(Code of Civil Procedure Section 1013a)

I do hereby certify that I am employed in the County of Monterey. I am over the age of eighteen years and not a party to the within stated cause. I placed true and correct copies of the **Statement of Decision**, for collection and mailing this date following our ordinary business practices. I am readily familiar with the Court's practices for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Services in Monterey, California, in a sealed envelope with postage fully prepaid. The names and addresses of each person to whom notice was mailed is as follows:

Deborah Chang
44 Hermosa Avenue
Hermosa Beach CA 90254

Sarah Robin London
275 Battery Street 29th Floor
San Francisco CA 94111-3339

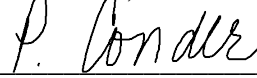
William Scott Kronenberg
1 Kaiser Plaza Ste 1675
Oakland CA 94612-4729

Andrew H Swartz
550 Hartnell Street
Monterey CA 93940

Dated: April 7, 2022

Clerk of the Court,

By: _____



P Conder, Deputy Clerk