

LAW REVIEW

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“BURNING MAN” BURNS MAN

This is a Burning Man case. Could be the first of its kind. I mean, who goes to Burning Man in the Black Rock desert of Nevada, where anything goes, there are no rules, just a bit of dust, then sues?

If everyone is grooving in the desert, why would anyone sue? Don't you go there to get away from it all—including lawyers? Here's an even more interesting question. Why would anyone attending the Black Rock Burning Man Festival later sue because...drum roll...because they walked into the flaming Burning Man effigy and burned themselves? I kid you not.

Burning Man Effigy

Everyone knows about the Burning Man Festival in the Black Rock desert of Nevada. It's the event where guys are fondly greeted by a 200-pound naked gal. Or so I am told. And that's just the start of the week.

The event closes with the burning of a 60-foot wood sculpture in the figure of a man. Once ignited, the wood sculpture burns, topples, and then continues to burn in a gigantic bonfire. Festivalgoers frequently throw personal objects into the fire. It's part of getting in touch.

One With Nature

Anthony Beninati attended the festival in the years 2002, 2003 and 2005. When Beninati arrived at the bonfire site in 2005, the torched sculpture had already fallen. He walked around the perimeter three times, circling closer to the fire each time. Then he took a few steps into the smoldering fire—to a spot where there were flames on either side. He moved a few steps further into the blaze—feeling the heat. Another step. Suddenly he tripped, falling into the fire twice, badly burning both hands. People poured water on him, then paramedics transported Beninati offsite for medical treatment.

The Blame Game

Beninati did what anyone would do who foolishly walks into the middle of a burning fire and burns himself. He hired a lawyer and sued the Burning Man promoter, Black Rock City, LLC, in San Francisco. Beninati claimed that Black Rock negligently allowed attendees to approach the burning remnants of the Burning Man sculpture “without provision for safe ingress and egress ‘routes and corridors’ for those attendees who were moved by the event to directly participate in the burning ritual.”

As you can imagine, the Burning Man folks defended claiming that Beninati “assumed the risk” of injury by approaching the fire when the risk of getting burned was an “obvious, avoidable, and inherent risk,” and the organizers had no legal duty to minimize that risk.

Risk-Assumed Cases

The Court of Appeal discussed dozens of cases, generally recreation accidents, where the injured party assumed the risk of injury inherent in the sport or activity and lost their suit for damages. These include--a skier collision with a snow-making hydrant, a figure skater's collision with another skater, a rock-climbing fall, a skier colliding with a ski lift tower, "tubing" behind a boat, an errant foul ball, bicycle race accidents and many more.

Risk Not Assumed.

The Court also discussed cases where the participant was found not to have assumed the risk such as when a golf course hole was found to be designed in an unusually dangerous manner, a case that I disagree with where the placing of volleyball net pole lines supposedly increased the risk of the player's injury, a case where an expert jump ramp was found unnecessarily dangerous for a motocross bicycle racer and even a case where a team mascot supposedly increased the inherent risk of a spectator being struck by a foul ball. Increasing the risk being the determining factor.

Duh

The Court had no problem concluding that Beninati assumed the risk of walking into the fire, and the Burning Man organizers owed him no duty to keep him from doing so.

Duh. Even I could have defended this case for Burning Man.

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