U.S. Skiing/snowboarding

- 10.4 million Americans either ski or snowboard.
- 60.5 Million skier/snowboarder visits 2007 – 2008 in the United States
- Skiing/snowboarding are enjoyed by the elderly, the very young, a disproportionately large cohort of participants over age 60, the handicapped and the disabled.
CO Skiing/snowboarding economy

- 12,535,914 skier/snowboarder visits in 2007-2008 ski season
- $1.368 Billion sales (2004)
- 32,000 jobs (2004)

NSAA & Office of State Planning and Budget 2004

Skier & snowboarder safety in the U.S.
**U.S. Ski Safety Statistics**

- Fatality rate: 0.88 deaths per million s/v. 2007/08 = 53 fatalities in U.S.
- Males from 20 to 39 years of age are majority of skier/snowboarder fatalities.
- "Striking Object" was the leading cause of death with 36 percent.
- Severe, nonfatal injury, *i.e.*, paralysis & brain trauma rate: 0.80 per million s/v.
- Average injury rate per F.A.R. ~ 3.37/1,000 s/v.
  - Annual est. skier/snowboarder F.A.R. visits ~ 203,885

**CO Ski Safety Statistics**

- Predicted CO skier hospital visits: ~20,250
- Fatalities, on and off *piste* ~ 15/yr.

“Hot Topics” in Ski Law

- Helmets
- Waivers
- Skier collisions
- Groomer and snowmobile vs. skier collisions
- Child defendants

Helmet Safety

- Helmets reduce the severity of adult head injuries by 44%
- Children under the age of 15, helmets reduce head injuries by 53%.
- 17,500 head injuries associated with skiing and snowboarding in 1997.
- 7,700 injuries could be avoided or made less severe, and 11 deaths could be prevented by proper use of protective headgear.

Ski Act imposes minimal safety duties on ski areas

33-44-104. Negligence - civil actions.

(1) A violation of any requirement of this article shall, to the extent such violation causes injury to any person or damage to property, constitute negligence on the part of the person violating such requirement.

(2) A violation by a ski area operator of any requirement of this article or any rule or regulation promulgated by the passenger tramway safety board pursuant to section 25-5-704 (1) (a), C.R.S., shall to the extent such violation causes injury to any person or damage to property, constitute negligence on the part of such operator.

Minimal safety duties

- Tramway safety
- Signs and notices
- Snowmobile and groomer safety
Waivers seek to immunize ski areas from even the minimal statutory duties of care.
CONSIDERATION OF ALLOWING HOLDER TO USE THE SKI AREA FACILITIES, THE UNDERSIGNED AGREE TO HOLD HARMLESS, RELEASE, DEFEND, AND INDEMNIFY Vail Resorts, Inc. FROM ANY AND ALL LIABILITY and/or claims for injury or death to persons or damages to property, arising from the Holder's engagement in the Activity. The Undersigned take full responsibility for any injury or loss to Holder, including death, which Holder may suffer, arising in whole or in part out of the Activity, INCLUDING THOSE INJURIES AND DAMAGES CAUSED BY ANY RELEASED PARTY's ALLEGED OR ACTUAL NEGLIGENCE OR BREACH OF ANY EXPRESS OR IMPLIED WARRANTY. By execution of this release, THE UNDERSIGNED AGREE NOT TO SUE ANY RELEASED PARTY.

Ski Act safety provisions trump season waivers

- Waivers project an image of disregard for safety, especially as to children; and also discriminate against season pass purchasers.

- The “release and indemnity agreements . . . are contrary to the public policy of this state and are, therefore, unenforceable.”

S.B. 03-253

“A parent of a child may, on behalf of the child, release or waive the child’s prospective claim for negligence.”

Collision case and claim estimates

- 7 - 10 % of skier & snowboard injuries result from skier collisions
- Skier collision cases tried in CO courts since 1967

Ninio v. Hight, 385 F.2d 350 (10th Cir., Colo. 1967); Shalayt, NSAA report, .

Worldwide Copyright James H. Chalat, Denver, CO
Groomer and snowmobile accidents

- Snowmobile operators have duty of care under the Colorado Snowmobile Registration Statute, 33-14-116.

How to bungle a media relationship

- Pfahler v. Swimm ("Grumpy old man sues sweet little 8-year old")
- Accusations that the old man “roughed up” the kid, and cursed at him.
Claire Huntington, CU Law Professor
Front Page

"Colorado law says a minor cannot be sued, but his or her parents can, said Clare Huntington, associate professor at the University of Colorado Law School.

“This is just a basic rule,” she said.

The court will likely dismiss Scott from the lawsuit, she said.

9 News

Anchor: "Despite what Pfahler's attorney says, Colorado law states you cannot sue a minor, so the court could dismiss the portion of the suit filed against the boy.”
Doering v Copper Mtn., 259 F.3rd 1202 (10th Circ. 2001)

“(T)he district court properly ruled that the Ski Safety Act controls and could render the conduct of the children (ages four and six) negligent.”

Children have co-equal duties of care on ski slopes, under the Colorado Ski Safety Act. Courts routinely evaluate the conduct of children under the statutory standards of conduct established under the Ski Act.

Mr. Swimm’s testimony

13 A. (BY MR. SWIMM) I’ve seen the letter before. The letter
14 does exist. I have it in my possession. And that is
15 just something that was misrepresented --
16 MR. WATHEN: Just answer his questions.
17 Q. (BY MR. CHALAT) You were going to say this
18 is -- the fact of the occurrence of the letter has been
19 misrepresented. By whom, sir?
20 MR. WATHEN: Objection to the form of the
21 question.
22 A. (BY MR. CHALAT) Answer the question.
23 A. By the media, I believe.
24 Q. (BY MR. CHALAT) But not by you?
25 A. No.
The responding patrollers

3 Q. (By Mr. Chalat) Did you hear Mr. Swimm say anything that
4 Pfahler had hurt his son?
5 A. (Patroller Brooks) I did not.
6 Q. Did you hear Mr. Swimm indicate that Pfahler
7 had grabbed his son and had cussed him out? . . .
9 A. No, I thought about it and –
19 Q. (By Mr. Chalat) Did he (Pfahler) use any curse words, to your
20 recollection?
21 A. (Patroller McGuire) Not that I recall.
22 Q. Did he cuss you out?
23 A. No.
24 Q. Do you remember him cussing out Mr. Swimm?
25 A. Not that I recall.

The Professor’s apology - Back page.

“My comments did not address the underlying merits of the case, nor did I intend to suggest that the plaintiff’s case cannot succeed. Moreover, I did not intend to opine on Colorado law concerning ski safety, including any application of the Ski Safety Act. Finally, I would like to clarify that in no way did I intend to impugn the integrity of the plaintiff’s lawyer.” – Claire Huntington, 12/20/2007