Skier & snowboarder safety: hot issues for consumers
U.S. Skiing/snowboarding

- 9.2 million Americans ski and/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. 2.67 (ski)~ 3.37(sb)/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.

Should ski areas take waivers for minimal safety imposed by the Ski Act?

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 for which ski areas seek waiver immunity:

- Tramway safety
- Signs and notices
- Snowmobile and groomer safety

Plus:
- Ski instruction cases
- Food safety
- Premises safety
- In-area avalanche
Waivers seek to immunize ski areas from even the minimal statutory duties of care.
WARNING, ASSUMPTION OF RISK, RELEASE OF LIABILITY AND INDEMNIFICATION AGREEMENT

PLEASE READ CAREFULLY BEFORE SIGNING.

THIS IS A RELEASE OF LIABILITY AND WAIVER OF CERTAIN LEGAL RIGHTS

Head of Household NAME: ____________________________ CUSTOMER ID #: ____________________________
Family Member #2: ____________________________
Family Member #3: ____________________________
Family Member #4: ____________________________

WARNING, ASSUMPTION OF RISK, RELEASE OF LIABILITY AND INDEMNIFICATION AGREEMENT

PLEASE READ CAREFULLY BEFORE SIGNING.

THIS IS A RELEASE OF LIABILITY AND WAIVER OF CERTAIN LEGAL RIGHTS.

"HOLDER" MEANS THE SEASON PASS APPLICANT LISTED ON THIS FORM USING THE SEASON PASS.

THE "UNDERSIGNED" MEANS THE HOLDER, AND WHEN THE HOLDER IS UNDER AGE 18, IT INCLUDES
SUCH HOLDER'S PARENT OR LEGAL GUARDIAN SIGNING ON BEHALF OF HIMSELF/HERSELF AND ON
BEHALF OF THE MINOR HOLDER. THE UNDERSIGNED UNDERSTAND AND AGREE THAT BEING
UNWITNESSABLE TO ANY WINTER AREA ACTIVITY, INCLUDING THE LIFT, FOR ANY PURPOSE
HERETOFORTHER, THE "ACTIVITY") CAN BE HAZARDOUS AND PRESENTS A RISK OF PHYSICAL INJURIES OR DEATH.

The Undersigned expressly ASSUME ALL RISKS associated with Holder’s participation in the Activity, known or
unknown, inherent or otherwise; the Undersigned agree and understand these risks include, but are not limited to, risks associated with: marked and unmarked obstacles, slick or uneven walking surfaces, surfaces covered with ice and snow, varying weather and surface conditions, diminished visibility, rugged mountaineous terrain, variations in terrain, bumps, stumps, forest growth, downed timber, rocks of various sizes, stormy weather, high altitude, collisions, failure of protective barriers and fencing and sharing the ski area facilities and Activity venues with people directly involved and/or
not directly involved in the Activity. Pursuant to law, Holder assumes the responsibility of maintaining control at all
times while engaging in the Activity. The Undersigned understand and acknowledge: 1) Holder has been informed and
understands all rules and regulations of participation in the Activity; 2) Holder is responsible for reading, understanding
and complying with all signs, including instructions on use of the lift; 3) Holder must have the physical dexterity and
knowledge sufficient to safely load, ride and unload the lift; 4) Holder assumes the risks of using the lift and engaging
in activity accessible from the lift; 5) Holder may encounter obstacles, unskied, non-grooming equipment at any
time; and 6) that falls and collisions occur and that injuries are a common and ordinary occurrence of the Activity.
The Undersigned also understand and agree that A MINOR HOLDER MAY USE THE SKI LIFTS WITHOUT AN
ADULT PRESENT. RECOGNIZING THESE RISKS, [HOLDER VOLUNTARILY CHOOSES TO TAKE PART IN THE ACTIVITY. A minor Holder’s parent or legal guardian acknowledges: 1) they have spoken to the minor
Holder about the Activity; 2) the minor Holder understands and appreciates the risks of participating in the Activity; and
3) the minor Holder has voluntarily decided to participate in the Activity.

The Undersigned ASSUME ALL RISKS associated with the Holder’s participation in the Activity. IN
CONSIDERATION OF ALLOWING HOLDER TO USE THE SKI AREA FACILITIES, THE UNDERSIGNED AGREE TO HOLD UNDERSIGNED, RELEASE, DEFEND, AND INDEMNIFY THE Holder Company, The Vail Corporation, its affiliated companies and subsidiaries, including but not limited to those that
operate the Vail, Beaver Creek, Avon and Breckenridge resorts. Warren Valley, a General Partner Vail America, Inc., Tradle Real, USA, LLC and Amphibious Basin Ski Area, the United States, and all their respective insurance companies, successors in interest, agents, employees, representatives, assignees, officers, directors,
and shareholders (each hereinafter a “Released Party”) FROM ANY AND ALL LIABILITY and/or claims for injury or
death to persons or 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 AGREES NOT TO SEE ANY RELEASED PARTY, and agree they
are releasing any right to make a claim or file a lawsuit against any Released Party. The Undersigned further agree to
defend, indemnify, and hold each Released Party for any and all claims of the Undersigned and/or a third party arising in whole
or in part from Holder’s engagement in the Activity. The Undersigned agree to pay all costs and attorney’s fees incurred
by any Released Party in defending a claim or suit brought by or on behalf of the Undersigned.

2/19/2009

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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 damage 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

WARNING, ASSUMPTION OF RISK, RELEASE OF LIABILITY AND INDEMNIFICATION AGREEMENT cont.

The Undersigned agree and understand that THIS RELEASE IS APPLICABLE TO EACH AND EVERY DAY HOLDER PARTICIPATES IN THE ACTIVITY HEREBY. In consideration of allowing Holder to use the ski area facilities, THE UNDERSIGNED CONTRACTUALLY AGREE THAT ANY AND ALL CLAIMS FOR INJURY AND/or DEATH REGARDING AN 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

Signature of Holder or Parent/Legal Guardian of MINOR Holder
Print Name of Holder (Head of Household)

Signature of Holder or Parent/Legal Guardian of MINOR Holder
Print Name of Holder (Head of Household)

Signature of Holder or Parent/Legal Guardian of MINOR Holder
Print Name of Holder (Head of Household)

Fax application to: New Number (970) 754-3572
Vail Resorts Management Company, PO Box 7, Mail Stop (V43), Vail, Colorado 81658

2/19/2009
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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.”

*Rothstein v. Snowbird Corp., 175 P.3d 560 at 564 - 565 (Utah 2007).*
“A parent of a child may, on behalf of the child, release or waive the child’s prospective claim for negligence.”
Skier Collision cases ~ 7 – 10% of all skier injuries.

- A collision is not a risk assumed by skiers. Skiing is not a contact sport.
- Ski collision cases readily accepted by courts. History of skier collision cases since 1969
- Statutory presumption against the “uphill and overtaking” skier.
- Highest verdict $2.4M. Highest settlements $1.5M.
- Varying standards in other states, notably NY and CA.

Ninio v. Hight, 385 F.2d 350 (10th Circ., Colo. 1967); Shealy. NSAA report;
Groomer and snowmobile accidents

- Snowmobile operators have duty of care under the Colorado Snowmobiling 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.

“The case did not receive any publicity, however, until the Vail Daily newspaper published a story Dec. 20 that quoted Swimm’s mother. “Who in the world sues a child?” Susan Swimm protested. “It just boggles my mind every day.”

The story also quoted a law professor as saying that a minor cannot be sued directly in Colorado. And Pfahler, a former teacher who now works for Reader's Digest, was soon being reviled in Internet postings as a “bully,” “leach” and “loser.”

“Pfahler needs to 'get a life' and leave this kid alone,” wrote one Denver Post reader, while another said that “suing an 8-year-old is a new record low for our society.”

onpointnews.com
"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.
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."
"(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 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 –

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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.
“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