Johnny Kotun, age 28, was an expert recreational skier. On March 25, 2007 at 4:00 PM, Kotun was traversing along a lower cat walk across the "Wilbere cutoff" and was headed toward one of the lower parking lots at Snowbird Ski Resort. Defendant, a 16-year-old off-duty junior ski instructor, was descending the cutoff, directly under the Wilbere chair lift. Defendant took a jump off of a transition, and performed a 360. He landed, carved two wide arc turns and collided at high speed into Kotun. He was seen and heard waving his arms and shouting at defendant to avoid him in the moments before the collision. At impact, Kotun was ejected from his skis and thrown into a nearby tree. Defendant also went airborne into the tree. About 25' from the point of impact was a large, orange SLOW banner. The testimony from witnesses (including chairlift passengers who reported to the scene) and the defendant formed a basis for our expert to establish a minimum speed at point of impact > 42 mph.

Defendant sustained a non-displaced pelvic fracture, a concussion (no helmet) and bruising to his kidneys and spleen. He recovered without any impairment.

Kotun sustained mandibular and maxillary fractures. Although he was wearing a helmet, Kotun also sustained an intra cerebral and frontal lobe hemorrhage, and a severe shear injury. He recovered from the facial fractures but is now hemi-plegic on his left side, and has significant cognitive and speech impairments.

An office equipment sales person earning ~ $28,000.00 per year, Kotun was also a former high school football star, and a D3 college player. He volunteered for a local large high school as the receivers' coach. Paid medicals in the case were $131,000.00.

We were unable to make out a case for vicarious liability against Snowbird. The facts just did not meet the detailed requirements of *respondeat superior* under the Utah case of *Clover v Snowbird*, 808 P. 2d 1037 (1991). The defendant had clocked out from work an hour prior to the accident, and he had taken several lifts for personal recreational skiing before the accident. He was not in uniform at the time of the accident and he had traded in his skis for a borrowed pair of "trick skis" owned by his girlfriend. Defendant, a high school junior living with his family in Salt Lake, had a total of $1.5 Million in homeowner's coverage.

Utah's ski safety statute does not impose per se liability on the uphill skier in a skier collision case. And, there is some unfortunate precedent suggesting that in Utah a skier/skier collision is a risk of the activity. *Ricci v Schoultz* 963 P2d 784 (1998). We approached the case against the hitter under a "risk enhancement" theory.

The parties settled for the policy limits of $1.5 Million. A significant portion of the settlement payment was structured. My local counsel on the case were Craig Adamson and Craig Hoggan of Dart Adamson and Donovan of Salt Lake City. Our retained experts were:

Ski safety: Stan Gale
Engineering & accident reconstruction: Patrick Kelley, P.E.
Economics: Pat Pacey, Ph.D.
Rehabilitation: Doris Shriver
Neuro-psych: Erin Bigler, Ph. D.

JOHN NICHOLAS KOTUN, by and through his guardian and conservator MARIETTA KOTUN vs. STUART HOWE by and through his parent and general guardian RICHARD G. HOWE.
Civil No. 070907467 Judge L.A. Dever.
Third Judicial District Court in and for Salt Lake County, State of Utah