

Colorado Bar Association- Ski Law For Journalists

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- The *Act* provides responsibilities of the ski area operator *and* responsibilities of the skier
- This sharing of responsibilities provides predictability, consistency and a margin of safety

Colorado Ski Safety Act

- The act requires Ski Areas post or adhere to:
 - A series of required Signage on lifts and their use
 - A **WARNING** sign summarizing the inherent risks
 - Difficulty ratings on trails
 - Closed signs
 - Ski Area Boundary signs
 - Certain requirements with respect to marking man-made object not visible for 100'

Ski Areas' Responsibilities

- C.R.S Sec. 33-44-109 provides responsibilities of skiers:
- Ski on slopes within their ability level
- Maintain control of course and speed
- Must maintain a proper lookout so as to be able to avoid other skiers and obstacles
- Stay off closed trails
- Stay clear of snowcats, snowmobiles lift towers, etc.
- Heed all posted signage

Skier's Responsibilities

- **§ 33-44-103 (3.1) “EXTREME TERRAIN”**
MEANS ANY PLACE WITHIN THE SKI AREA
BOUNDARY THAT CONTAINS CLIFFS WITH A
MINIMUM TWENTY-FOOT RISE OVER A
FIFTEEN-FOOT RUN, AND SLOPES WITH A
MINIMUM FIFTY-DEGREE AVERAGE PITCH
OVER A ONE-HUNDRED-FOOT RUN.

Colorado Ski Safety Act

- § 33-44-103 (3.3) "FREESTYLE TERRAIN" INCLUDES, BUT IS NOT LIMITED TO, TERRAIN PARKS AND TERRAIN PARK FEATURES SUCH AS JUMPS, RAILS, FUN BOXES, AND ALL OTHER CONSTRUCTED AND NATURAL FEATURES, HALF-PIPES, QUARTER-PIPES, AND FREESTYLE-BUMP TERRAIN.

Colorado Ski Safety Act

C.R.S. Sec. 33-44-103(3.5) "Inherent dangers and risks of skiing" means those dangers or conditions **THAT** which are **an integral part** of the sport of skiing, including changing weather conditions; snow conditions as they exist or may change, such as ice, hard pack, powder, packed powder, wind pack, corn, crust, slush, cut-up snow, and machine-made snow; surface or subsurface conditions such as bare spots, forest growth, rocks, stumps, streambeds, **CLIFFS**, **EXTREME TERRAIN**, and trees or other natural objects, and collisions with such natural objects; impact with lift towers, signs, posts, fences or enclosures, hydrants, water pipes, other man-made structures and their components;

Colorado Ski Safety Act

C.R.S. Sec. 33-44-103 (3.5) (continued)...variations in steepness or terrain, whether natural or as a result of slope design, snowmaking or grooming operations, including but not limited to roads, **FREESTYLE TERRAIN, JUMPS**, and catwalks, freestyle terrain, jumps or other terrain modifications; collisions with other skiers; and the failure of skiers to ski within their own abilities. The term "inherent dangers and risks of skiing" does not include the negligence of a ski area operator as set forth in section 33-44-104(2). Nothing in this section shall be construed to limit the liability of the ski area operator for injury caused by the use or operation of ski lifts.

Colorado Ski Safety Act

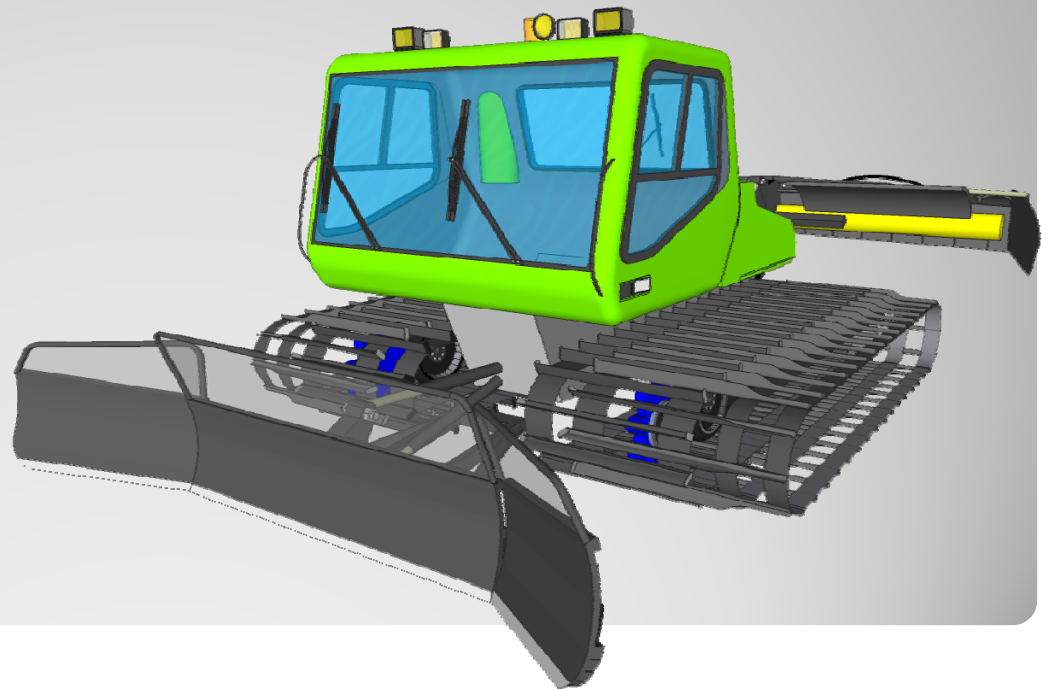
WARNING

UNDER COLORADO LAW, A SKIER ASSUMES THE RISK OF ANY INJURY TO PERSON OR PROPERTY RESULTING FROM ANY OF THE INHERENT DANGERS AND RISKS OF SKIING AND MAY NOT RECOVER FROM ANY SKI AREA OPERATOR FOR ANY INJURY RESULTING FROM ANY OF THE INHERENT DANGERS AND RISKS OF SKIING, INCLUDING: CHANGING WEATHER CONDITIONS; EXISTING AND CHANGING SNOW CONDITIONS; BARE SPOTS; ROCKS; STUMPS; TREES; COLLISIONS WITH NATURAL OBJECTS, MAN-MADE OBJECTS, OR OTHER SKIERS; VARIATIONS IN TERRAIN; AND THE FAILURE OF SKIERS TO SKI WITHIN THEIR OWN ABILITIES.

"THE SKI SAFETY ACT WAS AMENDED IN 2004 TO INCLUDE CLIFFS, EXTREME TERRAIN, JUMPS AND FREESTYLE TERRAIN AS INHERENT DANGERS AND RISKS OF THE SPORT."

Colorado Ski Safety Act

- Grooming equipment is required to post signage and have lighting.
- Type of or amount of grooming is not statutorily controlled and varies from area to area.



Grooming

- This has been an atypical year for avalanches given unusual snow pack, rain layers in some parts of the country, and wide temperature fluctuations.
- Avalanches [both in bounds and out-of-bounds] are not 100% predictable even given state-of-the-art control work
- Nevertheless the safety record with in-bounds avalanches is very good.

Avalanches

- Avalanche control work is not addressed by the Ski Safety Act
- Control work on USFS land is overseen by the forest service in partnership with the Ski Areas holding the Special Use Permit
- Generally the respective ski patrols are familiar with historical trends with respect to avalanche prone areas and apply that knowledge in designing their avalanche control program

Avalanches

- The industry and their counsel do not typically comment other than through a press release following a serious injury or fatality
- Similarly, the ski industry typically is in a no comment posture with respect to pending litigation



Media Relations

- This sport garners more than its share of media attention
- Not because it is more dangerous, but because of its clientele
- Participants include celebrities, and other high profile individuals
- When one of these individuals is seriously or fatally injured, significant coverage follows
- Examples Kennedy, Bono and McWethy

Media Attention

- Allow ski areas to offer discounts to guest that wish to sign them
- Other lift ticket products are available to guests that do not wish to sign a release
- Goes to the right of everyone to voluntarily choose the risks they wish to assume
- Basic right to contract

Releases

- Helmets are a good idea, however, users should not overestimate their capabilities



Helmets

- This study was not an empirical or statistically accurate study *and* its prediction with respect to fatalities has not been borne out
- We are at approximately 40% helmet usage and the rate of fatalities are unchanged.

CPSC Helmet Study

- The main determiner as to safety on the slopes is skier behavior
- Skiers/ Snowboarders that follow the precepts of *Your Responsibility Code* and the *Ski Act* will be safer
- Not unlike defensive driving

Skier Behavior

1. Always stay in control, and be able to stop or avoid other people or objects.
2. People ahead of you have the right of way. It is your responsibility to avoid them.
3. You must not stop where you obstruct a trail or are not visible from above.
4. Whenever starting downhill or merging into a trail, look uphill and yield to others.
5. Always use devices to help prevent runaway equipment.
6. Observe all posted signs and warnings. Keep off closed trails and out of closed areas.
7. Prior to using any lift, you must have the knowledge and ability to load, ride and unload safely.

Your Responsibility Code

- Useful New Tools in Litigation
- Brian Brill – Mountain Graphix



Demonstrative Exhibits