

**ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672**  
**7101 HOUSE LABOR & COMMERCE**

ski lift . . . we had a couple of signs posted there they would have to go by in order to get to the ski lift and actually load on the lift.

Although no "trail" signs were posted, Salmonberry Ridge is just one small open hill; there are no real, designated trails as such. After skiers get off of the lift, they have the option of going to the right or going to the left, skiing each respective side of the hill. While others, including Hiibschman, said that they saw no signs, the jury found that such signs were posted. John Wiland, the mountain manager when Salmonberry Ridge opened, testified that signs were posted in each of the outhouses, going into the warming hut, on the lift shack, and at the top of the lift shack. Theresa Day was skiing on the day of Hiibschman's injury and recalls seeing signs posted in the outhouse and in the ski tow area. Aaron Kelly, who also was skiing with Hiibschman, saw the signs posted on the inside of the outhouse and on the front of the warming hut. Therefore, we affirm the superior court's ruling that genuine issues of material fact existed as to whether requisite signs were posted at prominent locations in the ski area.<sup>18</sup>

V. DID THE SUPERIOR COURT ABUSE ITS DISCRETION IN GRANTING THE PROTECTIVE ORDER RELATING TO HIIBSCHMAN'S PRIOR DWI CONVICTION AND/OR PRIOR DRINKING EXPERIENCE?

The superior court prohibited the City from discovering or using evidence relating to Hiibschman's prior Driving While

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18. Our resolution of the merits of this issue makes it unnecessary to discuss the City's argument that the issue is improperly before the court.

Intoxicated (DWI) conviction and prior drinking experience pursuant to Evidence Rule 402<sup>19</sup> and 403.<sup>20</sup>

We reverse a trial court's decision on the admission of evidence only for an abuse of discretion. Atkinson v. State, 611 P.2d 528, 532 (Alaska), cert. denied 449 U.S. 876 (1980). The City believes that such an abuse occurred; it argues that the probative value of the evidence far exceeds its prejudicial effect. The City intends to use the evidence to establish that Hiibschman and her mother knew of the adverse effects the alcohol had on Hiibschman's functioning. The City claims the evidence shows Hiibschman's lack of judgment on the day of the accident, as well as her mother's own negligence in permitting Hiibschman to drink alcohol. It also shows Hiibschman's tolerance level for alcohol.<sup>21</sup>

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19. Evidence rule 402 states,

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States or of this state, by enactments of the Alaska Legislature, by these rules, or by other rules adopted by the Alaska Supreme Court. Evidence which is not relevant is not admissible.

20. Evidence Rule 403 states,

Although relevant, evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

21. Hiibschman was arrested in December 1985 for DWI. She entered a plea of no contest, receiving a sentence of a \$250 fine, 72 hours in jail, and alcohol screening. She claimed that the  
(continued...)

We hold that the superior court did not abuse its discretion in issuing the protective order. While the City argues that the court's citation to Rules 402 and 403 indicates that the court found "the evidence relevant under 402, but nonetheless excluded it under Rule 403. . . .", the sparse reference by the superior court does not conclusively support the City's interpretation. The court also may have found the evidence irrelevant under Evidence Rule 402.

We conclude that the evidence does have marginal relevance. Hiibschman admits knowledge about the effects of alcohol. She has taken Freshman Health in school where she learned about the amount of alcohol that impairs one's judgment. While Hiibschman claims she did not drink enough to impair her judgment, the excluded evidence is only slightly relevant to this point. In Dyer v. State, the court of appeals said that evidence used to impeach a witness by showing that he was an alcoholic at the time of the incident about which he was testifying "was only tangentially probative of how much alcohol he actually drank that particular night." 666 P.2d 438, 451 (Alaska App. 1983). Moreover, other evidence exists which suggests Hiibschman's consumption and impairment. The availability of alternative

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21. (...continued)  
experience made her very careful about drinking. The incident involved drinking some of her grandfather's beer and putting her mother's truck into a ditch. She alleges the truck ended up in the ditch not because of her alcohol consumption, but because the street had about four inches of glare ice on it. When she touched the brakes to stop at the stop sign, the truck slid into the ditch. She recognizes that her judgment was impaired.

evidence goes to the probativeness of the evidence in dispute. Finally, this information is not relevant to the comparative negligence of Hiibschman's mother, for she did not give Hiibschman alcohol on the day in question.

The cases cited by the City are unhelpful. This type of relevance question, requiring the balancing of prejudice and probativeness, is a fact specific inquiry. The potential prejudice, that the jury would punish Hiibschman for her prior conduct, may outweigh the evidence's marginal relevance. The superior court did not abuse its discretion.<sup>22</sup>

CONCLUSION

We AFFIRM in part, and REVERSE in part, and REMAND the case for a new trial.

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22. As to the other issues on appeal, we need not address them. The City concedes that expert testimony is not essential if the matter is remanded. As to Hiibschman's argument that AS 09.65.135 violates equal protection under the Alaska Constitution, our construction of AS 09.65.135 makes resolution of this issue unnecessary.



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February 26, 1992

A recent Supreme Court ruling regarding Alaska Statute 09.65.135 (Inherent Risk of Skiing) has created a need to pursue, at the very least, clarification of the original law.

Please find enclosed an overview of the ruling as well as other documents pertaining to the statute. It is our fear that this ruling could jeopardize alpine skiing and other related outdoor winter activities in Alaska.

Because all Alaskans benefit from skiing as a major winter activity, I am asking your assistance in amending the current Alaska Inherent Risk of Skiing Statute.

Sincerely,

John Heiser  
Director of Mountain Operations

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## THE NEED FOR LEGISLATION ON THE INHERENT RISKS OF SKIING



There are 14 downhill ski areas in Alaska: Eaglecrest near Juneau; Salmonberry Ridge in Valdez; Eyak in Cordova; the Coast Guard hill in Kodiak; Alyeska Resort in Girdwood; Alpenglow, Arctic Valley, Hillberg and Hilltop in Anchorage; Cleary Summit, Ski Land, Ravenwood and Birch Hill near Fairbanks; and Black Rapids near Delta. In addition, numerous organizations prepare and/or operate nordic trails: Anchorage Nordic Ski Club; Hatcher Pass Ski Lodge; Chena Hot Springs Resort; etc.



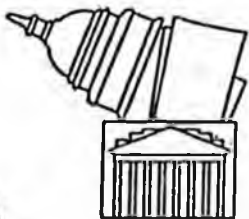
There are many inherent risks in any sport, and skiing is no exception. Ski area operators sell access to a winter alpine or nordic environment – not to perfectly manicured, danger-free slopes or trails. This environment includes all manner of risks: weather, slopes, forest growth and debris, snow conditions, lift towers, hydrants, etc. All competent skiers recognize that ski area operators and track setters can not modify even a small portion of this environment. There is no way to make skiing "safe" – individual skiers must have personal responsibility for their participation in the sport.



Since 1980, Alaska has had a statute relieving ski area operators of liability for injuries or property damage which arise from the inherent risks of skiing. The purpose of this statute was to recognize that ski area operators could not eliminate these risks, and to ensure that ski areas could obtain insurance and remain open for the skiing public. The law has been very important in allowing operators to obtain insurance, and to continue to provide skiers the opportunity to enjoy their favorite winter outdoor recreation. An effective law will continue to be important in providing the legal climate necessary to develop winter tourism facilities in Alaska.



In December of 1991, the Alaska Supreme Court interpreted the statute as not preventing suits by injured skiers claiming the operator had failed to make the slopes or trails "safe" for patrons. As a result of the court's interpretation, voluntary safety efforts can result in greater risk of liability than leaving natural hazards in place! This ruling defeats the purpose of the statute, and leaves operators and skiers in substantial danger that Alaska ski areas will not be able to obtain insurance at reasonable rates. Assuming ski areas can still operate, ticket prices will have to increase substantially to cover the increased insurance premiums.



Two bills have been introduced in the Alaska Legislature in an effort to partially re-establish the responsibility of all skiers for their own safety. This legislation requires the operator to post signs describing the inherent risks of skiing, and modifies the list of inherent risks. The legislation was introduced as House Bill 491 and Senate Bill 403. It is very important that all Alaska skiers contact their legislators to support these bills. We have only a short time to make the necessary changes. The legislature must adopt the new law this spring to be in effect for the 1992-93 ski season.

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SENATE BILL NO. 403

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY SENATOR KERTTULA

Introduced: 2/14/92  
Referred: Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil liability for skiing accidents; and providing for an effective date."

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 \* Section 1. PURPOSE. The purpose of this Act is to revise state law relating to civil liability for  
4 skiing accidents enacted by ch. 80, SLA 1980, as interpreted by the Alaska Supreme Court in  
5 *Hiltschman v. City of Valdez*, \_\_\_\_\_ P.2d \_\_\_\_\_, Op. No. 3783 (Alaska 1991).

6 \* Sec. 2. AS 09.65.135(b) is amended to read:

7 (b) A ski area operator shall post the following sign in a clearly visible location at the  
8 ski area where tramway tickets and ski school lessons are sold, and at the uphill loading  
9 point of each tramway [TRAIL SIGNS AT PROMINENT LOCATIONS WITHIN A SKI  
10 AREA WHICH SHALL INCLUDE A LIST OF THE INHERENT RISKS OF SKIING AND  
11 THE LIMITATION ON LIABILITY OF THE SKI AREA OPERATOR PROVIDED BY THIS  
12 SECTION].

13 WARNING

14 Under Alaska law, the risk of injury to a person or property resulting

1 from an inherent risk of skiing rests only with the skier. A ski area  
2 operator is not liable to a skier for an injury resulting from an  
3 inherent risk of skiing. Inherent risks of skiing include changing  
4 weather and snow conditions, bare spots, rocks, trees, collisions with  
5 lift towers or other skiers, variations or steepness in terrain, or a  
6 skier's failure to ski within the skier's ability.

7 \* Sec. 3. AS 09.65.135(c) is amended to read:

8 (c) In this section,

9 (1) "inherent risks of skiing" means the danger or conditions that [WHICH] are  
10 an integral part of the sport of skiing, including [, BUT NOT LIMITED TO,]

11 (A) changing weather conditions;

12 (B) variations or steepness in terrain, whether natural or a result of  
13 slope design, including roads, catwalks, bumps, or other terrain modifications;

14 (C) snow [OR ICE] conditions as they exist or may change, including  
15 ice, hard pack, powder, wind pack, corn, slush, cut-up snow, and machine-made  
16 snow;

17 (D) surface or subsurface conditions, including [SUCH AS] bare spots,  
18 forest growth, [AND] rocks, streambeds, trees, other natural objects, and collisions  
19 with natural objects;

20 (E) collisions with tramway [LIFT] towers, signs, posts, fences,  
21 enclosures, hydrants, water pipes, other man-made structures, and their components  
22 unless the skier is on the tramway [LIFT];

23 (F) collisions with other skiers; [AND]

24 (G) a skier's failure to ski within the limits of the skier's ability; and

25 (H) snow making or grooming operations;

26 (2) "injury" means [A] personal injury, death, [OR] property damage, or other  
27 loss;

28 (3) "skier" means a person in a ski area engaged in the sport of skiing, sliding  
29 downhill on snow or ice on skis, a toboggan, a sled, a tube, a ski-bob, a snow-board, or other  
30 device for recreation in snow;

31 (4) "ski area" means all ski slopes, trails, and other places under the control of

1 a ski area operator and administered as a single enterprise in the state;

2 (5) "ski area operator" means the operator of a ski area;

3 (6) "tramway" means a device regulated under AS 05.20 that is a rope-tow  
4 or a passenger, aerial, surface, or ski lift.

5 \* Sec. 4. APPLICABILITY. AS 09.65.135, as amended by secs. 2 and 3 of this Act, applies to an  
6 act or omission that occurs on or after the effective date of this Act.

7 \* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

3

**Effect of amendments.** — The first 1982 amendment added "and by filing that statement with the court" at the end of subsection (c) and rewrote subsection (e).

The second 1982 amendment, in subsection (b), substituted "the obligor's" for "his" and inserted "obligee or, where the order is issued to the" and "or collections are being made through the child support enforcement agency, to that agency."

**Editor's notes.** — Section 12, chapter 96, SLA 1981, provides: "AS 09.65.132

added in sec. 1 of this act has the effect of changing Rule 77 of the Alaska Rules of Civil Procedure by establishing a procedure and time limits for court review of an income assignment order which differ from those generally applicable in civil actions."

AS 09.35.080, referred to in subsection (g), was repealed by § 14, ch. 62, SLA 1982. For present exemption provisions, see AS 09.38.

**Sec. 09.65.135. Limitations on claims arising from skiing.** (a) A skier may not recover from a ski area operator for injury resulting from an inherent risk of skiing unless the injury occurred when the ski area operator was not providing the information required by (b) of this section.

(b) A ski area operator shall post trail signs at prominent locations within a ski area which shall include a list of the inherent risks of skiing and the limitation on liability of the ski area operator provided by this section.

§ 09.65.135

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§ 09.70.010

CODE OF CIVIL PROCEDURE

§ 09.70.010

(c) In this section

(1) "inherent risks of skiing" means the dangers or conditions which are an integral part of the sport of skiing, including, but not limited to,

(A) changing weather conditions;

(B) variations or steepness in terrain;

(C) snow or ice conditions;

(D) surface or subsurface conditions such as bare spots, forest growth, and rocks;

(E) collisions with lift towers, other structures, and their components unless the skier is on the lift;

(F) collisions with other skiers; and

(G) a skier's failure to ski within the limits of the skier's ability;

(2) "injury" means a personal injury or property damage or loss;

(3) "skier" means a person in a ski area engaged in the sport of skiing, sliding downhill on snow or ice on skis, a toboggan, a sled, a tube, a ski-bob, or other device for recreation in snow;

(4) "ski area" means all ski slopes, trails and other places under the control of a ski area operator and administered as a single enterprise in the state;

(5) "ski area operator" means the operator of a ski area. (§ 2 ch 80 SLA 1980)

**Cross references.** — For required snow safety and operation plan, see AS 18.60.822; for legislative intent, see § 1,

ch. 80, SLA 1980, in Temporary and Special Acts.

*For regulation of ski lift, see AS 05.00.010-.120*

**Chapter 70. General Provisions. 13 AAC 15.010**

Section

10. Applicability of title  
20. Short title

Section

**Sec. 09.70.010. Applicability of title.** This title governs all proceedings in actions brought after January 1, 1963, and all further proceedings in actions then pending, except to the extent that, in the

4

HOUSE BILL NO. 491  
 IN THE LEGISLATURE OF THE STATE OF ALASKA  
 SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Introduced: 2/18/92

Referred: Labor & Commerce, Judiciary

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12 (B) variations or steepness in terrain, whether natural or a result of  
13 slope design, including roads, catwalks, jumps, or other terrain modifications;

14 (C) snow [OR ICE] conditions as they exist or may change, including  
15 ice, hard pack, powder, wind pack, corn, slush, cut-up snow, and machine-made  
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17 (D) surface or subsurface conditions, including [SUCH AS] bare spots,  
18 forest growth, [AND] rocks, streambeds, trees, other natural objects, and collisions  
19 with natural objects;

20 (E) collisions with tramway [LIFT] towers, signs, posts, fences,  
21 enclosures, hydrants, water pipes, other man-made structures, and their components  
22 unless the skier is on the tramway [LIFT];

23 (F) collisions with other skiers; [AND]

24 (G) a skier's failure to ski within the limits of the skier's ability; and

25 (H) snow making or grooming operations;

26 (2) "injury" means [A] personal injury, death, [OR] property damage, or other  
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1 a ski area operator and administered as a single enterprise in the state;

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7 \* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

5

WEST'S COLORADO REVISED STATUTES  
ANNOTATED  
COPR. WEST 1991 No Claim to Orig. Govt. Works  
TITLE 33. WILDLIFE AND PARKS AND  
OUTDOOR RECREATION  
RECREATIONAL AREAS AND SKI SAFETY  
ARTICLE 44. SKI SAFETY AND LIABILITY

§ 33-44-101. Short title

This article shall be known and may be cited as the "Ski Safety Act of 1979".

1990 Main Volume Credit(s)

(Laws 1979, S.B.203, § 1.)

§ 33-44-102. Legislative declaration

The general assembly hereby finds and declares that it is in the interest of the state of Colorado to establish reasonable safety standards for the operation of ski areas and for the skiers using them. Realizing the dangers that inhere in the sport of skiing, regardless of any and all reasonable safety measures which can be employed, the purpose of this article is to supplement the passenger tramway safety provisions of part 7 of article 5 of title 25, C.R.S.; to further define the legal responsibilities of ski area operators and their agents and employees; to define the responsibilities of skiers using such ski areas; and to define the rights and liabilities existing between the skier and the ski area operator and between skiers.

1990 Main Volume Credit(s)

(Laws 1979, S.B.203, § 1.)

§ 33-44-103. Definitions

As used in this article, unless the context otherwise requires:

(1) "Base area lift" means any passenger tramway which skiers ordinarily use without first using some other passenger tramway.

(2) "Competitor" means a skier actually engaged in competition or in practice therefor with the permission of the ski area operator on any slope or trail or portion thereof designated by the ski area operator for the purpose of competition.

(3) "Conditions of ordinary visibility" means daylight and, where applicable, nighttime in nonprecipitating

weather.

(4) "Passenger" means any person who is lawfully using any passenger tramway.

(5) "Passenger tramway" means a device as defined in section 25-5-702(4), C.R.S.

(6) "Ski area" means all ski slopes or trails and other places under the control of a ski area operator and administered as a single enterprise within this state.

(7) "Ski area operator" means "operator" as defined in section 25-5-702(3), C.R.S., and any person, partnership, corporation, or other commercial entity having operational responsibility for any ski areas, including an agency of this state or a political subdivision thereof.

(8) "Skier" means any person using a ski area for the purpose of skiing; for the purpose of sliding downhill on snow or ice on skis, a toboggan, a sled, a tube, a ski-bob, a snowboard, or any other device; or for the purpose of using any of the facilities of the ski area, including but not limited to ski slopes and trails.

(9) "Ski slopes or trails" means those areas designated by the ski area operator to be used by skiers for any of the purposes enumerated in subsection (8) of this section. Such designation shall be set forth on trail maps, if provided, and designated by signs indicating to the skiing public the intent that such areas be used by skiers for the purpose of skiing. Nothing in this subsection (9) or in subsection (8) of this section, however, shall imply that ski slopes or trails may not be restricted for use by persons using skis only or for use by persons using any other device described in subsection (8) of this section.

(10) "Inherent dangers and risks of skiing" means those dangers or conditions 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, 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; variations in steepness or terrain, whether natural or as a result of slope design, snowmaking or grooming operations, including but not limited to roads and catwalks 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.

1990 Main Volume Credit(s)

(Laws 1979, S.B.203, § 1.)

1991 Pocket Part Credit(s)

(8) amended and (10) added by Laws 1990, S.B.90-80, § 2, eff. July 1, 1990.

§ 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 25-5-710(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.

(3) All rules adopted or amended by the passenger tramway safety board on or after July 1, 1979, shall be subject to sections 24-4-103(8)(c) and (8)(d) and 24-34-104(9)(b)(II), C.R.S.

1990 Main Volume Credit(s)

(Laws 1979, S.B.203, § 1; Laws 1980, S.B.109, § 28; Laws 1981, S.B.317, § 10.)

§ 33-44-105. Duties of passengers

(1) No passenger shall board a passenger tramway if he does not have sufficient physical dexterity, ability, and knowledge to negotiate or use such facility safely or until such passenger has asked for and received information sufficient to enable him to use the equipment safely. A passenger is required to follow any written or verbal instructions that are given to him regarding the use of the passenger tramway.

(2) No passenger shall:

(a) Embark upon or disembark from a passenger tramway except at a designated area except in the event of a stoppage of the passenger tramway (and then only under the supervision of the operator) or unless reasonably necessary in the event of an emergency to prevent injury to the passenger or others;

(b) Throw or expel any object from any passenger tramway while riding on such device, except as permitted by the operator;

(c) Act, while riding on a passenger tramway, in any

manner that may interfere with proper or safe operation of such passenger tramway;

(d) Engage in any type of conduct that may contribute to or cause injury to any person;

(e) Place in an uphill track of a J-bar, T-bar, platter pull, rope tow, or any other surface lift any object that could cause another skier to fall;

(f) Embark upon a passenger tramway marked as closed;

(g) Disobey any instructions posted in accordance with this article or any verbal instructions by the ski area operator regarding the proper or safe use of a passenger tramway unless such verbal instructions are contrary to this article or the rules promulgated under it, or contrary to posted instructions.

1990 Main Volume Credit(s)

(Laws 1979, S.B.203, § 1.)

§ 33-44-106. Duties of operators—signs

(1) Each ski area operator shall maintain a sign system with concise, simple, and pertinent information for the protection and instruction of passengers. Signs shall be prominently placed on each passenger tramway readable in conditions of ordinary visibility and, where applicable, adequately lighted for nighttime passengers. Signs shall be posted as follows:

(a) At or near the loading point of each passenger tramway, regardless of the type, advising that any person not familiar with the operation of the device shall ask the operator of the device for assistance and instruction;

(b) At the interior of each two-car and multicar passenger tramway, showing:

(I) The maximum capacity in pounds of the car and the maximum number of passengers allowed;

(II) Instructions for procedures in emergencies.

(c) In a conspicuous place at each loading area of two-car and multicar passenger tramways, stating the maximum capacity in pounds of the car and the maximum number of passengers allowed;

(d) At all chair lifts, stating the following:

(I) "Prepare to Unload", which shall be located not less than fifty feet ahead of the unloading area;

(II) "Keep Ski Tips Up", which shall be located ahead of any point where the skis may come in contact with a platform or the snow surface;

(III) "Unload Here", which shall be located at the point designated for unloading;

(IV) "Safety Gate", which shall be located where applicable;

(V) "Remove Pole Straps from Wrists", which shall be located prominently at each loading area;

(VI) "Check for Loose Clothing and Equipment", which shall be located before the "Prepare to Unload" sign.

(e) At all J-bars, T-bars, platter pulls, rope tows, and any other surface lift, stating the following:

(I) "Remove Pole Straps from Wrists", which shall be placed at or near the loading area;

(II) "Stay in Tracks", "Unload Here", and "Safety Gate", which shall be located where applicable;

(III) "Prepare to Unload", which shall be located not less than fifty feet ahead of each unloading area.

(f) Near the boarding area of all J-bars, T-bars, platter pulls, rope tows, and any other surface lift, advising passengers to check to be certain that clothing, scarves, and hair will not become entangled with the lift;

(g) At or near the boarding area of all lifts, regarding the requirements of section 33-44-109(6).

(2) Other signs not specified by subsection (1) of this section may be posted at the discretion of the ski area operator.

(3) The ski area operator, before opening the passenger tramway to the public each day, shall inspect such passenger tramway for the presence and visibility of the signs required by subsection (1) of this section.

(4) The extent of the responsibility of the ski area operator under this section shall be to post and maintain such signs as are required by subsection (1) of this section in such condition that they may be viewed during conditions of ordinary visibility. Evidence that signs required by subsection (1) of this section were present, visible, and readable where required at the beginning of the passenger tramway operation on any given day raises a presumption that all passengers using said devices have seen and understood said signs.

1990 Main Volume Credit(s)

(Laws 1979, S.B.203, § 1.)

### § 33-44-107. Duties of ski area operators—signs and notices required for skiers' information

(1) Each ski area operator shall maintain a sign and marking system as set forth in this section in addition to that required by section 33-44-106. All signs required by this section shall be maintained so as to be readable and recognizable under conditions of ordinary visibility.

(2) A sign shall be placed in such a position as to be recognizable as a sign to skiers proceeding to the uphill loading point of each base area lift depicting and explaining signs and symbols which the skier may encounter at the ski

area as follows:

(a) The ski area's least difficult trails and slopes, designated by a green circle and the word "easiest";

(b) The ski area's most difficult trails and slopes, designated by a black diamond and the words "most difficult";

(c) The ski area's trails and slopes which have a degree of difficulty that falls between the green circle and the black diamond designation, designated by a blue square and the words "more difficult";

(d) Danger areas, designated by a red exclamation point inside a yellow triangle with a red band around the triangle and the word "Danger" printed beneath the emblem. Danger areas do not include areas presenting inherent dangers and risks of skiing.

(e) Closed trails or slopes, designated by an octagonal-shaped sign with a red border around a white interior containing a black figure in the shape of a skier with a black band running diagonally across the sign from the upper right-hand side to the lower left-hand side and with the word "Closed" printed beneath the emblem.

(3) If applicable, a sign shall be placed at or near the loading point of each passenger tramway, as follows:

"WARNING: This lift services (most difficult) or (most difficult and more difficult) or (more difficult) slopes only."

(4) If a particular trail or slope or portion of a trail or slope is closed to the public by a ski area operator, such operator shall place a sign notifying the public of that fact at each identified entrance of each portion of the trail or slope involved. Alternatively, such a trail or slope or portion thereof may be closed with ropes or fences.

(5) The ski area operator shall place a sign at or near the beginning of each trail or slope, which sign shall contain the appropriate symbol of the relative degree of difficulty of that particular trail or slope as set forth by subsection (2) of this section. This requirement shall not apply to a slope or trail designated "easiest" which to a skier is substantially visible in its entirety under conditions of ordinary visibility prior to his beginning to ski the same.

(6) The ski area operator shall mark its ski area boundaries in a fashion readily visible to skiers under conditions of ordinary visibility. Where the owner of land adjoining a ski area closes all or part of his land and so advises the ski area operator, such portions of the boundary shall be signed as required by paragraph (e) of subsection (2) of this section. This requirement shall not apply in heavily wooded areas or other nonskiable terrain.

(7) The ski area operator shall mark hydrants, water pipes, and all other man-made structures on slopes and trails which are not readily visible to skiers under conditions of ordinary visibility from a distance of at least one hundred feet and shall adequately and appropriately

cover such obstructions with a shock-absorbent material that will lessen injuries. Any type of marker shall be sufficient, including but not limited to wooden poles, flags, or signs, if the marker is visible from a distance of one hundred feet and if the marker itself does not constitute a serious hazard to skiers. Variations in steepness or terrain, whether natural or as a result of slope design or snowmaking or grooming operations, including but not limited to roads and catwalks or other terrain modifications, are not man-made structures, as that term is used in this article.

(8)(a) Each ski area operator shall post and maintain signs which contain the warning notice specified in paragraph (c) of this subsection (8). Such signs shall be placed in a clearly visible location at the ski area where the lift tickets and ski school lessons are sold and in such a position to be recognizable as a sign to skiers proceeding to the uphill loading point of each base area lift. Each sign shall be no smaller than three feet by three feet. Each sign shall be white with black and red letters as specified in this paragraph (a). The words "WARNING" shall appear on the sign in red letters. The warning notice specified in paragraph (c) of this subsection (8) shall appear on the sign in black letters, with each letter to be a minimum of one inch in height.

(b) Every ski lift ticket sold or made available for sale to skiers by any ski area operator shall contain in clearly readable print the warning notice specified in paragraph (c) of this subsection (8).

(c) The signs described in paragraph (a) of this subsection (8) and the lift tickets described in paragraph (b) of this subsection (8) shall contain the following warning notice:

#### 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.

1990 Main Volume Credit(s)

(Laws 1979, S.B.203, § 1; Laws 1979, S.B.534, § 1.)

1991 Pocket Part Credit(s)

(2)(d), (7) amended and (8) added by Laws 1990, S.B.90-80, § 3, eff. July 1, 1990.

#### HISTORICAL NOTES

##### HISTORICAL AND STATUTORY NOTES

###### 1991 Pocket Part Historical and Statutory Notes

The 1990 amendment added the second sentence of par. (2)(d); in subsec. (7), in the first sentence, inserted "adequately and appropriately" and added the last sentence; and added subsec. (8).

Sections 1, 9 and 10 of Laws 1990, S.B.90-80, provide:

"Section 1. Legislative declaration. The general assembly hereby finds and declares that the sport of skiing is practiced by a large number of residents of Colorado and attracts a large number of nonresidents, significantly contributing to the economy of this state. The general assembly further finds that, despite the passage of the 'Ski Safety Act of 1979', ski area operators of this state continue to be subjected to claims and litigation involving accidents which occur during the course of the sport of snow skiing, which claims and litigation and threat thereof unnecessarily increase Colorado ski area operators' costs. The general assembly further finds that such increased costs are due, in part, to confusion under the 'Ski Safety Act of 1979' as to whether a skier accepts and assumes the dangers and risks inherent in the sport of skiing. It is the purpose of this act, therefore, to clarify the law in relation to skiing injuries and the dangers and risks inherent in that sport, to establish as a matter of law that certain dangers and risks are inherent in that sport, and to provide that, as a matter of public policy, no person engaged in that sport shall recover from a ski area operator for injuries resulting from those inherent dangers and risks."

"Section 9. Severability. If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

"Section 10. Effective date—applicability. This act shall take effect July 1, 1990, and shall apply to all civil actions filed on or after said date."

1990 Main Volume Historical and Statutory Notes

## Main Volume Text

s 33-44-107. Duties of ski area operators--signs required for skiers' information

(1) Each ski area operator shall maintain a sign and marking system as set forth in this section in addition to that required by section 33-44-106. All signs required by this section shall be maintained so as to be readable and recognizable under conditions of ordinary visibility.

(2) A sign shall be placed in such a position as to be recognizable as a sign to skiers proceeding to the uphill loading point of each base area lift depicting and explaining signs and symbols which the skier may encounter at the ski area as follows:

(a) The ski area's least difficult trails and slopes, designated by a green circle and the word "easiest";

(b) The ski area's most difficult trails and slopes, designated by a black diamond and the words "most difficult";

(c) The ski area's trails and slopes which have a degree of difficulty that falls between the green circle and the black diamond designation, designated by a blue square and the words "more difficult";

(d) Danger areas, designated by a red exclamation point inside a yellow triangle with a red band around the triangle and the word "Danger" printed beneath the emblem;

(e) Closed trails or slopes, designated by an octagonal-shaped sign with a red border around a white interior containing a black figure in the shape of a skier with a black band running diagonally across the sign from the upper right-hand side to the lower left-hand side and with the word "Closed" printed beneath the emblem.

(3) If applicable, a sign shall be placed at or near the loading point of each passenger tramway, as follows:

"WARNING: This lift services (most difficult) or (most difficult and more difficult) or (more difficult) slopes only."

(4) If a particular trail or slope or portion of a trail or slope is closed to the public by a ski area operator, such operator shall place a sign notifying the public of that fact at each identified entrance of each portion of the trail or slope involved. Alternatively, such a trail or slope or portion thereof may be closed with ropes or fences.

(5) The ski area operator shall place a sign at

or near the beginning of each trail or slope, which sign shall contain the appropriate symbol of the relative degree of difficulty of that particular trail or slope as set forth by subsection (2) of this section. This requirement shall not apply to a slope or trail designated "easiest" which to a skier is substantially visible in its entirety under conditions of ordinary visibility prior to his beginning to ski the same.

(6) The ski area operator shall mark its ski area boundaries in a fashion readily visible to skiers under conditions of ordinary visibility. Where the owner of land adjoining a ski area closes all or part of his land and so advises the ski area operator, such portions of the boundary shall be signed as required by paragraph (e) of subsection (2) of this section. This requirement shall not apply in heavily wooded areas or other nonskiable terrain.

(7) The ski area operator shall mark hydrants, water pipes, and all other man-made structures on slopes and trails which are not readily visible to skiers under conditions of ordinary visibility from a distance of at least one hundred feet and shall cover such obstructions with a shock-absorbent material that will lessen injuries. Any type of marker shall be sufficient, including but not limited to wooden poles, flags, or signs, if the marker is visible from a distance of one hundred feet and if the marker itself does not constitute a serious hazard to skiers.

(Laws 1979, S.B.203, § 1; Laws 1979, S.B.534, § 1.)

## § 33-44-108. Ski area operators--additional duties

(1) Any motorized snow-grooming vehicle shall be equipped with a light visible at any time the vehicle is moving on or in the vicinity of a ski slope or trail.

(2) Whenever maintenance equipment is being employed to maintain or groom any ski slope or trail while such ski slope or trail is open to the public, the ski area operator shall place or cause to be placed a conspicuous notice to that effect at or near the top of that ski slope or trail.

(3) All snowmobiles operated on the ski slopes or trails of a ski area shall be equipped with at least the following: One lighted headlamp, one lighted red tail lamp, a brake system maintained in operable condition, and a fluorescent flag at least forty square inches mounted at least six feet above the bottom of the tracks.

(4) The ski area operator shall have no duty arising out

of its status as a ski area operator to any skier skiing beyond the area boundaries marked as required by section 33-44-107(6).

(5) The ski area operator, upon finding a person skiing in a careless and reckless manner, may revoke that person's skiing privileges. This subsection (5) shall not be construed to create an affirmative duty on the part of the ski area operator to protect skiers from their own or from another skier's carelessness or recklessness.

#### 1990 Main Volume Credit(s)

(Laws 1979, S.B.203, § 1.)

#### 1991 Pocket Part Credit(s)

(5) amended by Laws 1990, S.B.90-80, § 4, eff. July 1, 1990.

### HISTORICAL NOTES

#### HISTORICAL AND STATUTORY NOTES

##### 1991 Pocket Part Historical and Statutory Notes

The 1990 amendment rewrote subsec. (5).

For the legislative declaration, severability, effective date and applicability provisions found in Laws 1990, S.B.90-80, see Historical and Statutory Notes following § 33-44-107.

##### 1990 Main Volume Historical and Statutory Notes

#### Main Volume Text

#### § 33-44-108. Ski area operators--additional duties

(1) Any motorized snow-grooming vehicle shall be equipped with a light visible at any time the vehicle is moving on or in the vicinity of a ski slope or trail.

(2) Whenever maintenance equipment is being employed to maintain or groom any ski slope or trail while such ski slope or trail is open to the public, the ski area operator shall place or cause to be placed a conspicuous notice to that effect at or near the top of that ski slope or trail.

(3) All snowmobiles operated on the ski slopes or trails of a ski area shall be equipped with at least the following: One lighted headlamp, one lighted red tail lamp, a brake system maintained in

operable condition, and a fluorescent flag at least forty square inches mounted at least six feet above the bottom of the tracks.

(4) The ski area operator shall have no duty arising out of its status as a ski area operator to any skier skiing beyond the area boundaries marked as required by section 33-44-107(6).

(5) The ski area operator, upon finding a person skiing in a careless and reckless manner, may revoke that person's skiing privileges.

(Laws 1979, S.B.203, § 1.)

#### § 33-44-109. Duties of skiers--penalties

(1) Each skier solely has the responsibility for knowing the range of his own ability to negotiate any ski slope or trail and to ski within the limits of such ability. Each skier expressly accepts and assumes the risk of and all legal responsibility for any injury to person or property resulting from any of the inherent dangers and risks of skiing; except that a skier is not precluded under this article from suing another skier for any injury to person or property resulting from such other skier's acts or omissions. Notwithstanding any provision of law or statute to the contrary, the risk of a skier/skier collision is neither an inherent risk nor a risk assumed by a skier in an action by one skier against another.

(2) Each skier has the duty to maintain control of his speed and course at all times when skiing and to maintain a proper lookout so as to be able to avoid other skiers and objects. However, the primary duty shall be on the person skiing downhill to avoid collision with any person or objects below him.

(3) No skier shall ski on a ski slope or trail that has been posted as "Closed" pursuant to section 33-44-107(2)(e) and (4).

(4) Each skier shall stay clear of snow-grooming equipment, all vehicles, lift towers, signs, and any other equipment on the ski slopes and trails.

(5) Each skier has the duty to heed all posted information and other warnings and to refrain from acting in a manner which may cause or contribute to the injury of the skier or others. Each skier shall be presumed to have seen and understood all information posted in accordance with this article near base area lifts, on the passenger tramways, and on such ski slopes or trails as he is skiing. Under conditions of decreased visibility, the duty is on the skier to locate and ascertain the meaning of all signs posted in accordance with sections 33-44-106 and 33-44-107.

(6) Each ski used by a skier while skiing shall be equipped with a strap or other device capable of stopping

the ski should the ski become unattached from the skier. This requirement shall not apply to cross country skis.

(7) No skier shall cross the uphill track of a J-bar, T-bar, platter pull, or rope tow except at locations designated by the operator; nor shall a skier place any object in such an uphill track.

(8) Before beginning to ski from a stationary position or before entering a ski slope or trail from the side, the skier shall have the duty of avoiding moving skiers already on the ski slope or trail.

(9) No person shall move uphill on any passenger tramway or use any ski slope or trail while such person's ability to do so is impaired by the consumption of alcohol or by the use of any controlled substance, as defined in section 12-22-303(7), C.R.S., or other drug or while such person is under the influence of alcohol or any controlled substance, as defined in section 12-22-303(7), C.R.S., or other drug.

(10) No skier involved in a collision with another skier or person in which an injury results shall leave the vicinity of the collision before giving his name and current address to an employee of the ski area operator or a member of the voluntary ski patrol, except for the purpose of securing aid for a person injured in the collision; in which event the person so leaving the scene of the collision shall give his name and current address as required by this subsection (10) after securing such aid.

(11) No person shall knowingly enter upon public or private lands from an adjoining ski area when such land has been closed by its owner and so posted by the owner or by the ski area operator pursuant to section 33-44-107(6).

(12) Any person who violates any of the provisions of subsection (3), (9), (10), or (11) of this section is guilty of a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars.

#### 1990 Main Volume Credit(s)

(Laws 1979, S.B.203, § 1; Laws 1982, H.B.1076, § 17.)

#### 1991 Pocket Part Credit(s)

(1), (2) amended by Laws 1990, S.B.90-80, § 5, eff. July 1, 1990.

### HISTORICAL NOTES

#### HISTORICAL AND STATUTORY NOTES

##### 1991 Pocket Part Historical and Statutory Notes

The 1990 amendment, in subsec. (1), added the second

and third sentences; and, in subsec. (2), deleted the last sentence.

For the legislative declaration, severability, effective date and applicability provisions found in Laws 1990, S.B.90-80, see Historical and Statutory Notes following § 33-44-107.

#### 1990 Main Volume Historical and Statutory Notes

##### Main Volume Text

##### § 33-44-109. Duties of skiers—penalties

(1) Each skier solely has the responsibility for knowing the range of his own ability to negotiate any ski slope or trail and to ski within the limits of such ability.

(2) Each skier has the duty to maintain control of his speed and course at all times when skiing and to maintain a proper lookout so as to be able to avoid other skiers and objects. However, the primary duty shall be on the person skiing downhill to avoid collision with any person or objects below him. It is presumed, unless shown to the contrary by a preponderance of the evidence, that the responsibility for collisions by skiers with any person, natural object, or man-made structure marked in accordance with section 33-44-107(7) is solely that of the skier or skiers involved and not that of the ski area operator.

(3) No skier shall ski on a ski slope or trail that has been posted as "Closed" pursuant to section 33-44-107(2)(e) and (4).

(4) Each skier shall stay clear of snow-grooming equipment, all vehicles, lift towers, signs, and any other equipment on the ski slopes and trails.

(5) Each skier has the duty to heed all posted information and other warnings and to refrain from acting in a manner which may cause or contribute to the injury of the skier or others. Each skier shall be presumed to have seen and understood all information posted in accordance with this article near base area lifts, on the passenger tramways, and on such ski slopes or trails as he is skiing. Under conditions of decreased visibility, the duty is on the skier to locate and ascertain the meaning of all signs posted in accordance with sections 33-44-106 and 33-44-107.

(6) Each ski used by a skier while skiing shall be equipped with a strap or other device capable

of stopping the ski should the ski become unattached from the skier. This requirement shall not apply to cross country skis.

(7) No skier shall cross the uphill track of a J-bar, T-bar, platter pull, or rope tow except at locations designated by the operator; nor shall a skier place any object in such an uphill track.

(8) Before beginning to ski from a stationary position or before entering a ski slope or trail from the side, the skier shall have the duty of avoiding moving skiers already on the ski slope or trail.

(9) No person shall move uphill on any passenger tramway or use any ski slope or trail while such person's ability to do so is impaired by the consumption of alcohol or by the use of any controlled substance, as defined in section 12-22-303(7), C.R.S., or other drug or while such person is under the influence of alcohol or any controlled substance, as defined in section 12-22-303(7), C.R.S., or other drug.

(10) No skier involved in a collision with another skier or person in which an injury results shall leave the vicinity of the collision before giving his name and current address to an employee of the ski area operator or a member of the voluntary ski patrol, except for the purpose of securing aid for a person injured in the collision; in which event the person so leaving the scene of the collision shall give his name and current address as required by this subsection (10) after securing such aid.

(11) No person shall knowingly enter upon public or private lands from an adjoining ski area when such land has been closed by its owner and so posted by the owner or by the ski area operator pursuant to section 33-44-107(6).

(12) Any person who violates any of the provisions of subsection (3), (9), (10), or (11) of this section is guilty of a class 2 petty offense and, upon conviction thereof, shall be punished by a fine of not more than three hundred dollars.

(Laws 1979, S.B.203, § 1; Laws 1982, H.B.1076, § 17.)

#### Main Volume Historical and Statutory Notes

The 1982 amendment substituted in subsec. (9) references to controlled substances for references to narcotic.

### § 33-44-110. Competition

(1) The ski area operator shall, prior to the beginning of a competition, allow each competitor a reasonable visual inspection of the course or area where the competition is to be held.

(2) The competitor shall be held to assume the risk of all course conditions including, but not limited to, weather and snow conditions, course construction or layout, and obstacles which a visual inspection should have revealed. No liability shall attach to a ski area operator for injury or death of any competitor proximately caused by such assumed risk.

#### 1990 Main Volume Credit(s)

(Laws 1979, S.B.203, § 1.)

### § 33-44-111. Statute of limitation

All actions against any ski area operator or its employees brought to recover damages for injury to person or property caused by the maintenance, supervision, or operation of a passenger tramway or a ski area shall be brought within two years after the claim for relief arises and not thereafter.

#### 1990 Main Volume Credit(s)

(Laws 1979, S.B.203, § 1.)

#### 1991 Pocket Part Credit(s)

Amended by Laws 1990, S.B.90-80, § 6, eff. July 1, 1990.

### HISTORICAL NOTES

#### HISTORICAL AND STATUTORY NOTES

#### 1991 Pocket Part Historical and Statutory Notes

The 1990 amendment substituted "two" years for "three" years.

For the legislative declaration, severability, effective date and applicability provisions found in Laws 1990, S.B.90-80, see Historical and Statutory Notes following § 33-44-107.

#### 1990 Main Volume Historical and Statutory Notes

**Main Volume Text**

**s 33-44-111. Statute of limitation**

All actions against any ski area operator or its employees brought to recover damages for injury to person or property caused by the maintenance, supervision, or operation of a passenger tramway or a ski area shall be brought within three years after the claim for relief arises and not thereafter.

(Laws 1979, S.B.203, § 1.)

**§ 33-44-112. Limitation on actions for injury resulting from inherent dangers and risks of skiing**

Notwithstanding any judicial decision or any other law or statute to the contrary, including but not limited to sections 13-21-111 and 13-21-111.7, C.R.S., no skier may make any claim against or recover from any ski area operator for injury resulting from any of the inherent dangers and risks of skiing.

1991 Pocket Part Credit(s)

Added by Laws 1990, S.B.90-80, § 7, eff. July 1, 1990.

**HISTORICAL NOTES**

**HISTORICAL AND STATUTORY NOTES**

**1991 Pocket Part Historical and Statutory Notes**

For the legislative declaration, severability, effective date and applicability provisions found in Laws 1990, S.B.90-80, see Historical and Statutory Notes following § 33-44-107.

**§ 33-44-113. Limitation of liability**

The total amount of damages which may be recovered from a ski area operator by a skier who uses a ski area for the purpose of skiing or for the purpose of sliding downhill on snow or ice on skis, a toboggan, a sled, a tube, a ski-bob, a snowboard, or any other device and who is injured, excluding those associated with an injury occurring to a passenger while riding on a passenger tramway, shall not exceed one million dollars, present value, including any derivative claim by any other claimant, which shall not exceed two hundred fifty thousand dollars, present value,

and including any claim attributable to noneconomic loss or injury, as defined in sections 13-21-102.5(2)(a) and (2)(b), C.R.S., whether past damages, future damages, or a combination of both, which shall not exceed two hundred fifty thousand dollars. If, upon good cause shown, the court determines that the present value of the amount of lost past earnings and the present value of lost future earnings, or the present value of past medical and other health care costs and the present value of the amount of future medical and other health care costs, or both, when added to the present value of other past damages and the present value of other future damages, would exceed such limitation and that the application of such limitation would be unfair, the court may award damages in excess of the limitation equal to the present value of additional future damages, but only for the loss of such excess future earnings, or such excess future medical and other health care costs, or both. For purposes of this section, "present value" has the same meaning as that set forth in section 13-64-202(7), C.R.S., and "past damages" has the same meaning as that set forth in section 13-64-202(6), C.R.S. The existence of the limitations and exceptions thereto provided in this section shall not be disclosed to a jury.

1991 Pocket Part Credit(s)

Added by Laws 1990, S.B.90-80, § 7, eff. July 1, 1990.

**HISTORICAL NOTES**

**HISTORICAL AND STATUTORY NOTES**

**1991 Pocket Part Historical and Statutory Notes**

For the legislative declaration, severability, effective date and applicability provisions found in Laws 1990, S.B.90-80, see Historical and Statutory Notes following § 33-44-107.

**§ 33-44-114. Inconsistent law or statute**

Insofar as any provision of law or statute is inconsistent with the provisions of this article, this article controls.

1991 Pocket Part Credit(s)

Added by Laws 1990, S.B.90-80, § 7, eff. July 1, 1990.

**HISTORICAL NOTES**

**HISTORICAL AND STATUTORY NOTES**

4

For the legislative declaration, severability, effective date and applicability provisions found in Laws 1990, S.B.90-80, see Historical and Statutory Notes following § 33-44-107.

**IDAHO CODE**

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**TITLE 6. ACTIONS IN PARTICULAR CASES  
CHAPTER 11. RESPONSIBILITIES AND  
LIABILITIES  
OF SKIERS AND SKI AREA OPERATORS**

**6-1101. Legislative purpose.**

The legislature finds that the sport of skiing is practiced by a large number of citizens of this state and also attracts a large number of nonresidents, significantly contributing to the economy of Idaho. Since it is recognized that there are inherent risks in the sport of skiing which should be understood by each skier and which are essentially impossible to eliminate by the ski area operation, it is the purpose of this chapter to define those areas of responsibility and affirmative acts for which ski area operators shall be liable for loss, damage or injury, and to define those risks which the skier expressly assumes and for which there can be no recovery.

[I.C., § 6-1101, as added by 1979, ch. 270, § 1, p. 701.]

**6-1102. Definitions.**

The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section.

(1) "Aerial passenger tramway" means any device operated by a ski area operator used to transport passengers, by single or double reversible tramway; chair lift or gondola lift; T-bar lift, J-bar lift, platter lift or similar device; or a fiber rope tow, which is subject to regulations adopted by the proper authority.

(2) "Passenger" means any person who is lawfully using an aerial passenger tramway, or is waiting to embark or has recently disembarked from an aerial passenger tramway and is in the immediate vicinity.

(3) "Ski area" means property owned or leased and under the control of the ski area operator within the state of Idaho.

(4) "Ski area operator" means any person, partnership, corporation or other commercial entity and their agents, officers, employees or representatives, who has operational responsibility for any ski area or aerial passenger tramway.

(5) "Skiing area" means all designated slopes and trails but excludes any aerial passenger tramway.

(6) "Skier" means any person present at a skiing area under the control of a ski area operator for the purpose of engaging in the sport of skiing by utilizing the ski slopes and trails and does not include the use of an aerial

passenger tramway.

(7) "Ski slopes and trails" means those areas designated by the ski area operator to be used by skiers for the purpose of participating in the sport of skiing.

[I.C., § 6-1102, as added by 1979, ch. 270, § 1, p. 701.]

#### 6-1103. Duties of ski area operators with respect to ski areas.

Every ski area operator shall have the following duties with respect to their operation of a skiing area:

(1) To mark all trail maintenance vehicles and to furnish such vehicles with flashing or rotating lights which shall be in operation whenever the vehicles are working or are in movement in the skiing area;

(2) To mark with a visible sign or other warning implement the location of any hydrant or similar equipment used in snowmaking operations and located on ski slopes and trails;

(3) To mark conspicuously the top or entrance to each slope or trail or area, with an appropriate symbol for its relative degree of difficulty; and those slopes, trails, or areas which are closed, shall be so marked at the top or entrance;

(4) To maintain one or more trail boards at prominent locations at each ski area displaying that area's network of ski trails and slopes with each trail and slope rated thereon as to its [its] relative degree of difficulty;

(5) To designate by trail board or otherwise which trails or slopes are open or closed;

(6) To place, or cause to be placed, whenever snowgrooming or snowmaking operations are being undertaken upon any trail or slope while such trail or slope is open to the public, a conspicuous notice to that effect at or near the top of such trail or slope;

(7) To post notice of the requirements of this chapter concerning the use of ski retention devices. This obligation shall be the sole requirement imposed upon the ski area operator regarding the requirement for or use of ski retention devices;

(8) To provide a ski patrol with qualifications meeting the standards of the national ski patrol system;

(9) To post a sign at the bottom of all aerial passenger tramways which advises the passengers to seek advice if not familiar with riding the aerial passenger tramway; and

(10) Not to intentionally or negligently cause injury to any person; provided, that except for the duties of the operator set forth in subsections (1) through (9) of this section and in section 6-1104, Idaho Code, the operator shall have no duty to eliminate, alter, control or lessen the risks inherent in the sport of skiing, which risks include but

are not limited to those described in section 6-1106, Idaho Code; and, that no activities undertaken by the operator in an attempt to eliminate, alter, control or lessen such risks shall be deemed to impose on the operator any duty to accomplish such activities to any standard of care.

[I.C., § 6-1103, as added by 1979, ch. 270, § 1, p. 701.]

#### HISTORICAL NOTES

Compiler's Notes. The bracketed word "its" in subsection (4) was inserted by the compiler.

#### 6-1104. Duties of ski area operators with respect to aerial passenger tramways.

Every ski area operator shall have the duty to construct, operate, maintain and repair any aerial passenger tramway in accordance with the American national standards safety requirements for aerial passenger tramways.

[I.C., § 6-1104, as added by 1979, ch. 270, § 1, p. 701.]

#### 6-1105. Duties of passengers.

Every passenger shall have the duty not to:

(1) Board or embark upon or disembark from an aerial passenger tramway except at an area designated for such purpose;

(2) Drop, throw or expel any object from an aerial passenger tramway;

(3) Do any act which shall interfere with the running or operation of an aerial passenger tramway;

(4) Use any aerial passenger tramway if the passenger does not have the ability to use it safely without instruction until the passenger has requested and received sufficient instruction to permit safe usage;

(5) Embark on an aerial passenger tramway without the authority of the ski area operator;

(6) Use any aerial passenger tramway without engaging such safety or restraining devices as may be provided.

[I.C., § 6-1105, as added by 1979, ch. 270, § 1, p. 701.]

#### 6-1106. Duties of skiers.

It is recognized that skiing as a recreational sport is hazardous to skiers, regardless of all feasible safety measures which can be taken.

Each skier expressly assumes the risk of and legal responsibility for any injury to person or property which results from participation in the sport of skiing including

any injury caused by the following, all whether above or below snow surface: variations in terrain; surface or subsurface snow or ice conditions; bare spots, rocks, trees, other forms of forest growth or debris, lift towers and components thereof; utility poles, and snowmaking and snowgrooming equipment which is plainly visible or plainly marked in accordance with the provisions of section 6-1103, Idaho Code. Therefore, each skier shall have the sole individual responsibility for knowing the range of his own ability to negotiate any slope or trail, and it shall be the duty of each skier to ski within the limits of the skier's own ability, to maintain reasonable control of speed and course at all times while skiing, to heed all posted warnings, to ski only on a skiing area designated by the ski area operator and to refrain from acting in a manner which may cause or contribute to the injury of anyone. The responsibility for collisions by any skier while actually skiing, with any person, shall be solely that of the individual or individuals involved in such collision and not that of the ski area operator.

No person shall place any object in the skiing area or on the uphill track of any aerial passenger tramway which may cause a passenger or skier to fall; cross the track of any T-bar lift, J-bar lift, platter lift or similar device, or a fiber rope tow, except at a designated location; or depart when involved in a skiing accident, from the scene of the accident without leaving personal identification, including name and address, before notifying the proper authorities or obtaining assistance when that person knows that any other person involved in the accident is in need of medical or other assistance.

No skier shall fail to wear retention straps or other devices to help prevent runaway skis.

[I.C., § 6-1106, as added by 1979, ch. 270, § 1, p. 701.]

#### 6-1107. Liability of ski area operators.

Any ski area operator shall be liable for loss or damages caused by its failure to follow the duties set forth in sections 6-1103 and 6-1104, Idaho Code, where the violation of duty is causally related to the loss or damage suffered. The ski area operators shall not be liable to any passenger or skier acting in violation of their duties as set forth in sections 6-1105 and 6-1106, Idaho Code, where the violation of duty is causally related to the loss or damage suffered; nor shall a ski area operator be liable for any injury or damage to a person who is not legally entitled to be in the ski area; or for any loss or damages caused by any object dropped, thrown or expelled by a passenger from an aerial passenger tramway.

[I.C., § 6-1107, as added by 1979, ch. 270, § 1, p. 701.]

#### 6-1108. Liability of passengers.

Any passenger shall be liable for loss or damages resulting from violations of the duties set forth in section 6-1105, Idaho Code, and shall not be able to recover from the ski area operator for any losses or damages where the violation of duty is causally related to the loss or damage suffered.

[I.C., § 6-1108, as added by 1979, ch. 270, § 1, p. 701.]

#### 6-1109. Liability of skiers.

Any skier shall be liable for loss or damages resulting from violations of the duties set forth in section 6-1106, Idaho Code, and shall not be able to recover from the ski area operator for any losses or damages where the violation of duty is causally related to the loss or damage suffered.

[I.C., § 6-1109, as added by 1979, ch. 270, § 1, p. 701.]

7

MCKINNEY'S CONSOLIDATED LAWS OF NEW  
YORK ANNOTATED  
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Works

GENERAL OBLIGATIONS LAW  
CHAPTER 24-A OF THE CONSOLIDATED LAWS  
ARTICLE 18—SAFETY IN SKIING CODE

(Information regarding effective dates, repeals,  
etc. is provided subsequently in this document.)

§ 18-101. Legislative purpose

The legislature hereby finds that alpine or downhill skiing is both a major recreational sport and a major industry within the state of New York. The legislature further finds: (1) that downhill skiing, like many other sports, contains inherent risks including, but not limited to, the risks of personal injury or death or property damage, which may be caused by variations in terrain or weather conditions; surface or subsurface snow, ice, bare spots or areas of thin cover, moguls, ruts, bumps; other persons using the facilities; and rocks, forest growth, debris, branches, trees, roots, stumps or other natural objects or man-made objects that are incidental to the provision or maintenance of a ski facility in New York state; (2) that downhill skiing, without established rules of conduct and care, may result in injuries to persons and property; (3) that it is appropriate, as well as in the public interest, to take such steps as are necessary to help reduce the risk of injury to downhill skiers from undue, unnecessary and unreasonable hazards; and (4) that it is also necessary and appropriate that skiers become apprised of, and understand, the risks inherent in the sport of skiing so that they may make an informed decision of whether or not to participate in skiing notwithstanding the risks. Therefore, the purpose and intent of this article is to establish a code of conduct for downhill skiers and ski area operators to minimize the risk of injury to persons engaged in the sport of downhill skiing and to promote safety in the downhill ski industry.

1989 Main Volume Credit(s)

(Added L.1988, c. 711, § 1.)

GENERAL OBLIGATIONS LAW

< Laws 1963, Chapter 576 >

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

1989 Main Volume Historical and Statutory Notes

Effective Date; Rules and Regulations. Section 4 of L.1988, c. 711, provided: "This act [enacting this Article and amending Labor Law §§ 202-c and 867] shall take effect on November first, nineteen hundred eighty-eight; provided that section 18-106 of the general obligations law, as added by section one of this act, shall take effect on the first day of October, nineteen hundred eighty-nine; and provided further that the commissioner of labor, effective immediately, is authorized and directed to promulgate any and all rules and regulations necessary to the timely implementation of the provisions of this act on their effective dates."

§ 18-102. Definitions

The following words and phrases when used in this article shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

1. "Lift ticket" means any item issued by a ski area operator to any skier that is intended to be affixed to the outerwear of the skier, or otherwise displayed by a skier, to signify lawful entry upon and use of the passenger tramways or ski slopes or trails maintained by the ski area operator.

2. "Passenger tramway" means a mechanical device intended to transport skiers for the purpose of providing access to ski slopes and trails as defined by the commissioner of labor pursuant to section two hundred two-c or eight hundred sixty-seven of the labor law.

3. "Passenger" means a person in or on or being transported by a tramway.

4. "Ski area" means all ski slopes, ski trails and passenger tramways administered as a single enterprise within this state.

5. "Ski area operator" means a person, firm or corporation, and its agents and employees, having operational and administrative responsibility for any ski area, including any agency of the state, any political subdivision thereof, and any other governmental agency or instrumentality.

6. "Skier" means any person wearing a ski or skis and any person actually on a ski slope or trail located at a ski area, for the purpose of skiing.

7. "Ski slopes and trails" mean those areas designated by the ski area operator for skiing.

1989 Main Volume Credit(s)

(Added L.1988, c. 711, § 1.)

GENERAL OBLIGATIONS LAW

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

1989 Main Volume Historical and Statutory Notes

Effective Date; Rules and Regulations. Section effective Nov. 1, 1988, with rules and regulations to be promulgated as provided by section 4 of L.1988, c. 711, set out as a note under section 18-101.

§ 18-103. Duties of ski area operators

Every ski area operator shall have the following duties:

1. To equip all trail maintenance vehicles with such warning implements or devices as shall be specified by the commissioner of labor pursuant to section eight hundred sixty-seven of the labor law. Such implements or devices shall be present and operating whenever the vehicle is within the borders of any slope or trail.

2. To post in a location likely to be seen by all skiers signs of such size and color as will enable skiers to have knowledge of their responsibilities under this article.

3. To hold employee training sessions at least once before the beginning of each season, the contents of which shall be specified by the commissioner of labor upon the recommendation of the passenger tramway advisory council, as follows:

a. for operators of trail maintenance equipment concerning the safe operation of such vehicles in the ski area;

b. for passenger tramway attendants concerning the safe operation of passenger tramways;

c. for ski personnel charged with the responsibility of evacuating passengers from passenger tramways concerning proper evacuation techniques; and

d. for all other personnel charged with on-mountain maintenance, inspection or patrol duties as to methods to be used for summoning aid in emergencies.

4. To conspicuously mark with such implements as may be specified by the commissioner of labor pursuant to section eight hundred sixty-seven of the labor law, the location of such man-made obstructions as, but not limited to, snow-making equipment, electrical outlets, timing equipment, stanchions, pipes, or storage areas that are within the borders of the designated slope or trail, when the top of such obstruction is less than six feet above snow level.

5. To maintain in a central location at the ski area an information board or boards showing at a minimum the following:

a. the location of tramways, slopes or trails;

b. the status of each trail—open or closed;

c. the location of emergency communications or medical equipment and sites designated by the ski area operator for receipt of notice from skiers pursuant to subdivision thirteen of this section;

d. the relative degree of difficulty of each slope or trail (at a minimum easier, more difficult, most difficult); and

e. the general surface condition of each slope and trail as most recently recorded in the log required to be maintained by subdivision six of this section.

6. To inspect each open slope or trail that is open to the public within the ski area at least twice a day, and enter the results of such inspection in a log which shall be available for examination by the commissioner of labor. The log shall note:

a. the general surface conditions of such trail at the time of inspection (powder, packed powder, frozen granular, icy patches or icy surface, bare spots or other surface conditions);

b. the time of inspection and the name of the inspector;

c. the existence of any obstacles or hazards other than those which may arise from:

(i) skier use;

(ii) weather variations including freezing and thawing;

or

(iii) mechanical failure of snow grooming or emergency equipment which may position such equipment within the borders of a slope or trail.

7. To develop and maintain a written policy consistent with the regulations of the commissioner of labor upon the advice of the passenger tramway advisory council for situations involving the reckless conduct of skiers, which shall include, but not be limited to:

a. a definition of reckless conduct; and

b. procedures for approaching and warning skiers of reckless conduct and procedures for dealing with such skiers which may include the revocation of the lift tickets of such skiers.

8. To designate personnel to implement the ski area's policy on reckless conduct.

9. To report to the commissioner of labor by telephone within twenty-four hours any fatality or injury resulting in a fatality at the ski area.

10. To conspicuously post and maintain such ski area signage, including appropriate signage at the top of affected ski slopes and trails, notice of maintenance activities and for passenger tramways as shall be specified by the commissioner of labor pursuant to section two hundred two-c or eight hundred sixty-seven of the labor law.

11. To post in a conspicuous location at each lift line a sign, which shall indicate the degree of difficulty of trails served by that lift with signs as shall be specified by the

commissioner of labor pursuant to section two hundred two-c or eight hundred sixty-seven of the labor law.

12. To ensure that lift towers located within the boundaries of any ski slope or trail are padded or otherwise protected and that no protruding metal or wood objects, such as ladders or steps, shall be installed on the uphill or side portion of lift towers within the borders of a ski slope or trail, unless such objects are below the snow line, at least six feet above it, or padded or otherwise protected with such devices as, but not limited to, the following:

- a. commercially available tower padding;
- b. air or foam filled bags;
- c. hay bales encased in a waterproof cover; or
- d. soft rope nets properly spaced from the tower.

13. To, within a reasonable amount of time after the inspection required by subdivision six of this section, conspicuously mark with such implements as may be specified by the commissioner of labor pursuant to section eight hundred sixty-seven of the labor law and to provide sufficient warning to skiers by such marking or remove such obstacles or hazards which are located within the boundaries of any ski slope or trail and were noted pursuant to paragraph c of subdivision six of this section; and to also conspicuously mark with such implements and provide such warning or remove such obstacles or hazards within a reasonable amount of time after receipt of notice by the ski area operator from any skier as to the presence of such obstacles or hazards when notice is given at sites designated by the ski area operator for such receipt and the locations of which are made known to skiers pursuant to paragraph c of subdivision five of this section.

14. To have present at all times when skiing activity is in progress, individuals properly and appropriately trained for the safe operation of on-slope vehicles; trail maintenance equipment; tramways; tramway evacuations; implementation of the reckless skier policy; first aid and outdoor rescue; and, to have present according to a schedule posted for access by skiers, by the ski area operator, personnel appropriately trained in the instruction of skiers and passengers in methods of risk reduction while using ski slopes and passenger tramways and the instruction of skiers with respect to the risks inherent in the sport.

1989 Main Volume Credit(s)

(Added L.1988, c. 711, § 1.)

1992 Pocket Part Credit(s)

(As amended L.1989, c. 322, § 1.)

#### GENERAL OBLIGATIONS LAW

< Laws 1963, Chapter 576 >

#### HISTORICAL NOTES

#### HISTORICAL AND STATUTORY NOTES

#### 1992 Pocket Part Historical and Statutory Notes

1989 Amendment. Subd. 5, par. d. L.1989, c. 322, § 1, eff. July 10, 1989, inserted "at a minimum".

#### 1989 Main Volume Historical and Statutory Notes

Effective Date; Rules and Regulations. Section effective Nov. 1, 1988, with rules and regulations to be promulgated as provided by section 4 of L.1988, c. 711, set out as a note under section 18-101.

#### § 18-104. Duties of passengers

All passengers shall have the following duties:

1. To familiarize themselves with the safe use of any tramway prior to its use;
2. To remain in the tramway if the operation of a passenger tramway, as defined pursuant to section two hundred two-c of the labor law, is interrupted for any reason, until instructions or aid are provided by the ski area operator;
3. To board or disembark from passenger tramways only at points or areas designated by the ski area operator;
4. Not to eject any objects or material from a passenger tramway;
5. To use restraint devices in accordance with posted instructions;
6. To wear retention straps or other devices to prevent runaway skis;
7. Not to interfere with the operation of a passenger tramway;
8. Not to place or caused to be placed on the uphill track of a surface lift any object which may interfere with its normal operation; and
9. Not to wear loose scarves, clothing or accessories or expose long hair which may become entangled with any part of the device.

1989 Main Volume Credit(s)

(Added L.1988, c. 711, § 1.)

#### GENERAL OBLIGATIONS LAW

< Laws 1963, Chapter 576 >

## HISTORICAL NOTES

### HISTORICAL AND STATUTORY NOTES

#### 1989 Main Volume Historical and Statutory Notes

Effective Date; Rules and Regulations. Section effective Nov. 1, 1988, with rules and regulations promulgated as provided by section 4 of L.1988, c. 711, set out as a note under section 18-101.

#### § 18-105. Duties of skiers

All skiers shall have the following duties:

1. Not to ski in any area not designated for skiing;
2. Not to ski beyond their limits or ability to overcome variations in slope, trail configuration and surface or subsurface conditions which may be caused or altered by weather, slope or trail maintenance work by the ski area operator, or skier use;
3. To abide by the directions of the ski area operator;
4. To remain in constant control of speed and course at all times while skiing so as to avoid contact with plainly visible or clearly marked obstacles and with other skiers and passengers on surface operating tramways;
5. To familiarize themselves with posted information before skiing any slope or trail, including all information posted pursuant to subdivision five of section 18-103 of this article;
6. Not to cross the uphill track of any surface lift, except at points clearly designated by the ski area operator;
7. Not to ski on a slope or trail or portion thereof that has been designated as "closed" by the ski area operator;
8. Not to leave the scene of any accident resulting in personal injury to another party until such times as the ski area operator arrives, except for the purpose of summoning aid;
9. Not to overtake another skier in such a manner as to cause contact with the skier being overtaken and to yield the right-of-way to the skier being overtaken;
10. Not to willfully stop on any slope or trail where such stopping is likely to cause a collision with other skiers or vehicles;
11. To yield to other skiers when entering a trail or starting downhill;
12. To wear retention straps or other devices to prevent runaway skis;
13. To report any personal injury to the ski area operator before leaving the ski area; and
14. Not to willfully remove, deface, alter or otherwise damage signage, warning devices or implements, or other safety devices placed and maintained by the ski area operator pursuant to the requirements of section 18-103 of

this article.

#### 1989 Main Volume Credit(s)

(Added L.1988, c. 711, § 1.)

### GENERAL OBLIGATIONS LAW

< Laws 1963, Chapter 576 >

## HISTORICAL NOTES

### HISTORICAL AND STATUTORY NOTES

#### 1989 Main Volume Historical and Statutory Notes

Effective Date; Rules and Regulations. Section effective Nov. 1, 1988, with rules and regulations promulgated as provided by section 4 of L.1988, c. 711, set out as a note under section 18-101.

#### § 18-106. Duties of skiers and ski area operators with respect to inherent risks

It is recognized that skiing is a voluntary activity that may be hazardous regardless of all feasible safety measures that can be undertaken by ski area operators. Accordingly:

1. Ski area operators shall have the following additional duties:

a. To post at every point of sale or distribution of lift tickets, whether on or off the premises of the ski area operator, a conspicuous "Warning to Skiers" relative to the inherent risks of skiing in accordance with regulations promulgated by the commissioner of labor pursuant to subdivision four of section eight hundred sixty-seven of the labor law, and to imprint upon all lift tickets sold or distributed, such text and graphics as the commissioner of labor shall similarly specify, which shall conspicuously direct the attention of all skiers to the required "Warning to Skiers";

b. To post at every point of sale or distribution of lift tickets at a ski area notice to skiers and passengers that this article prescribes certain duties for skiers, passengers and ski area operators, and to make copies of this article in its entirety available without charge upon request to skiers and passengers in a central location at the ski area;

c. To make available at reasonable fees, as required by subdivision thirteen of section 18-103 of this article, instruction and education for skiers relative to the risks inherent in the sport and the duties prescribed for skiers by this article, and to conspicuously post notice of the times and places of availability of such instruction and education in locations where it is likely to be seen by skiers; and

d. To post notice to skiers of the right to a refund to the purchaser in the form and amount paid in the initial sale of any lift ticket returned to the ski area operator, intact and unused, upon declaration by such purchaser that he or she is unprepared or unwilling to ski due to the risks inherent in the sport or the duties imposed upon him or her by this article.

2. Skiers shall have the following additional duties to enable them to make informed decisions as to the advisability of their participation in the sport:

a. To seek out, read, review and understand, in advance of skiing, a "Warning to Skiers" as shall be defined pursuant to subdivision five of section eight hundred sixty-seven of the labor law, which shall be displayed and provided pursuant to paragraph a of subdivision one of this section; and

b. To obtain such education in the sport of skiing as the individual skier shall deem appropriate to his or her level of ability, including the familiarization with skills and duties necessary to reduce the risk of injury in such sport.

1989 Main Volume Credit(s)

(Added L.1988, c. 711, § 1.)

1992 Pocket Part Credit(s)

(As amended L.1989, c. 322, § 2.)

#### GENERAL OBLIGATIONS LAW

< Laws 1963, Chapter 576 >

#### HISTORICAL NOTES

#### HISTORICAL AND STATUTORY NOTES

#### 1992 Pocket Part Historical and Statutory Notes

1989 Amendment. Subd. 1, par. d. L.1989, c. 322, § 2, eff. Oct. 1, 1989, substituted provision that refunds will be made in the form and amount paid for provision that refunds will be in full and in cash.

Subd. 1, par. d. L.1989, c. 322, § 2, eff. Oct. 1, 1989, deleted "in full and in cash to the purchaser of the purchase price", and inserted "to the purchaser in the form and amount paid in the initial sale".

1989 Main Volume Historical and Statutory Notes

Effective Date; Rules and Regulations. Section

effective Oct. 1, 1988, with rules and regulations promulgated as provided by section 4 of L.1988, c. 711, set out as a note under section 18-101.

#### § 18-107. Construction

Unless otherwise specifically provided in this article, the duties of skiers, passengers, and ski area operators shall be governed by common law.

1989 Main Volume Credit(s)

(Added L.1988, c. 711, § 1.)

#### GENERAL OBLIGATIONS LAW

< Laws 1963, Chapter 576 >

#### HISTORICAL NOTES

#### HISTORICAL AND STATUTORY NOTES

#### 1989 Main Volume Historical and Statutory Notes

Effective Date; Rules and Regulations. Section effective Nov. 1, 1988, with rules and regulations promulgated as provided by section 4 of L.1988, c. 711, set out as a note under section 18-101.

#### § 18-108. Severability

If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this article that can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

1989 Main Volume Credit(s)

(Added L.1988, c. 711, § 1.)

#### GENERAL OBLIGATIONS LAW

< Laws 1963, Chapter 576 >

#### HISTORICAL NOTES

#### HISTORICAL AND STATUTORY NOTES

#### 1989 Main Volume Historical and Statutory Notes

Effective Date; Rules and Regulations. Section effective

Nov. 1, 1988, with rules and regulations promulgated as provided by section 4 of L.1988, c. 711, set out as a note under section 18-101.

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## OVERVIEW

The Alaska Supreme Court issued its first decision discussing the inherent risks of skiing statute, AS 09.65.135, in *Hiibschman v. City of Valdez*, --p.2d--,Op.No. 3783 (Alaska 1991).

Hiibschman was skiing the beginner hill of Salmon Berry Ridge, operated by the City of Valdez. The hill is 1,300 feet long and has a 208' vertical rise. The area posted inherent risks of skiing signs in at least five places: outside the lift shack, outside by the door to the warming hut, inside the warming hut, and one on the inside of each bathroom door.

Hiibschman was a beginning skier, having skied about 6 to 10 times before the day of the incident, in addition to having cross-country skied. Hiibschman voluntarily and knowingly skied over a bump/jump in the middle of the hill, and fell on her back, causing paraplegia. She believed it was appropriate for her to ski over the jump, having watched several skiers before her.

The origin of the jump was disputed, but there was evidence the jump was created and/or maintained with the tacit approval of the ski area.

The City moved for summary judgment, and the court granted the motion, with the exception of the issue of appropriate placement of signs as required by the statute. This issue went to the jury, which returned a verdict in favor of the city. Hiibschman appealed.

The Alaska Supreme Court held as follows:

1. The inherent risk of skiing statute does not eliminate a ski operator's liability for negligence.
  - a. The statute was intended to bar recovery for those actions which only the skier could control and that were beyond the ski area operator's control.
  - b. The statute preserved the common law duties of landowners, which required the landowner to act as a reasonable person in maintaining his property in a reasonably safe condition in view of all the circumstances, including the likelihood of injury to others, the seriousness of the injury, and the burden of the respective parties of avoiding the risk.

- c. Assumption of risk is only available in its "no duty" form where a person voluntarily and unreasonably assumes a negligently created risk.
- d. Only risks which are obvious and necessary to the sport of skiing are inherent risks of skiing.
- e. The jump encountered by Hiibsachman was not an inherent risk of skiing as a matter of law, because (1) jumps are not listed in the statute, and (2) Hiibsachman did not know the jump was hazardous.
- f. The status of the jump as an inherent risk of skiing should have been submitted to the jury.

2. The duty owed to a skier for a natural or an artificial condition is governed by the general landowner's duty in Webb and Moloso, as set out in 1(b), above.

- a. The origin of the danger is a factor in applying the Webb analysis.

[Q: Does a ski area operator have a duty to remove natural hazards, or are all natural hazards covered by the inherent risks of skiing statute?]

- b. An artificial danger can produce an inherent risk of skiing, such as lift towers, adequately visible traffic control devices, unprotected telephone poles on the side of a ski area, moguls built up by skiers, etc.
- c. An artificially created jump can not be as a matter of law "variations or steepness in terrain" or surface . . . conditions" under AS 09.65.135(a) (1).
- d. Ski area operator protection from liability for artificial conditions should be construed narrowly. "The intent of this legislation is to clarify the law concerning the natural, inescapable risks that are a part of the sport of skiing . . . ."
- e. There is an issue of fact as to whether the jump was naturally or artificially created.

3. For "skiing beyond one's ability" to bar an action, the skier must subjectively know he or she is skiing beyond his or her ability, as an inherent risk of skiing must be necessary and subjectively obvious.
4. A claim is not barred if the injury is caused both by an inherent risk of skiing and the ski area operator's negligence.
  - a. The inherent risk of skiing statute does not eliminate the doctrine of comparative negligence.
  - b. Where an injury is caused by both an inherent risk of skiing and the negligence of the ski area, the skier's negligence will reduce the recovery based on the doctrine of comparative negligence.
  - c. The ski area operator must show the skier voluntarily and unreasonably assumed the negligently created risk.

[Q: If there is negligence on the part of the area operator, does this automatically mean the risk is not inherent?]

[Q: If an inherent risk can combine with operator negligence to cause an injury, and there is no comparative negligence by the skier, is there an apportionment of fault between the inherent risk (for which the operator is not liable) and the operator's negligence?]

5. In an area such as Salmon Berry Ridge (a single, open hill, where there are no real, designated trails as such), it is not insufficient as a matter of law to post the signs required by the inherent risk statute on the warming hut, lift shack, and outhouses.

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NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

HEATHER HIIBSCHMAN, by and )  
through her guardian, DEBRA )  
WELCH, and DEBRA WELCH, )

Appellants and )  
Cross-Appellees, )

v. )

CITY OF VALDEZ and VALDEZ )  
OFFICE BUILDING, INC., d/b/a/ )  
VALDEZ BOTTLE STOP LIQUOR )  
STORE, )

Appellees and )  
Cross-Appellants. )

Supreme Court Nos. S-3678  
and S-3679

Superior Court No.  
3VA-87-18 Civil

O P I N I O N

[No. 3783 - December 6, 1991]

Apperances: Roger W. Dubrock, Law Office of  
Roger W. Dubrock, Anchorage, for Appellants  
and Cross-Appellees. Donna P. Walker, James  
M. Seedorf, Anchorage for Appellee and Cross-  
Appellant, City of Valdez.

Before: Rabinowitz, Chief Justice, Burke,  
Matthews, Compton, and Moore, Justices.

RABINOWITZ, Chief Justice.

## INTRODUCTION

Heather Hiibschman sued the City of Valdez in tort for injuries incurred as she went over a ski bump-jump at a city ski hill. The superior court granted part of the City's summary judgment motion and let part of Hiibschman's case go to the jury, which found against her. She appeals and the City cross-appeals, both primarily questioning the interpretation of Alaska's 1980 Limitations on Claims Arising From Skiing Act ("Ski Act"), AS 09.65.135.<sup>1</sup>

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1. **Limitations on claims arising from skiing.**

(a) A skier may not recover from a ski area operator for injury resulting from an inherent risk of skiing unless the injury occurred when the ski area operator was not providing the information required by (b) of this section.

(b) A ski area operator shall post trail signs at prominent locations within a ski area which shall include a list of the inherent risks of skiing and the limitation on liability of the ski area operator provided by this section.

(c) In this section

(1) "inherent risks of skiing" means the dangers or conditions which are an integral part of the sport of skiing, including, but not limited to,

(A) changing weather conditions;

(B) variations or steepness in terrain;

(C) snow or ice conditions;

(D) surface or subsurface conditions such as bare spots, forest growth, and rocks;

(continued...)

STATEMENT OF FACTS

Salmonberry Ridge, the only downhill ski facility in Valdez, opened to the public in January 1986. It is considered a beginner's hill, measuring 1,300 feet from top to bottom with a 208 foot vertical rise. From the base of the hill one can view almost the entire hill.

Several bump-jumps could be found on the hill at the time of Hiibschman's accident.<sup>2</sup> The jump at issue was located at the

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1. (...continued)

(E) collisions with lift towers, other structures, and their components unless the skier is on the lift;

(F) collisions with other skiers; and

(G) a skier's failure to ski within the limits of the skier's ability;

(2) "injury" means a personal injury or property damage or loss;

(3) "skier" means a person in a ski area engaged in the sport of skiing, sliding downhill on snow or ice on skis, a toboggan, a sled, a tube, a ski-bob, or other device for recreation in snow;

(4) "ski area" means all ski slopes, trails and other places under the control of a ski area operator and administered as a single enterprise in the state;

(5) "ski area operator" means the operator of a ski area.

2. While the City contends that this was more of a "bump" than a "jump," the term "jump" will be used. We draw the inferences in Hiibschman's favor, as she was the party opposing summary judgment. Wilson v. Pollet, 416 P.2d 381, 383-84 (Alaska 1966).

lower left side of the hill if one looked at the hill from its bottom. The jump was located on a relatively flat area of the hill, although there was a steeper area just uphill of the jump. The jump was estimated to be from two feet to four feet in height. It was the only jump in that area of the hill and was a "focal point" of the run on that side of the hill.

On March 13, 1986, Heather Hiibschman, a fifteen year old, went skiing at Salmonberry Ridge. Hiibschman was a beginner skier. She had gone downhill skiing approximately six to ten times prior to the accident, although she had also cross-country skied. Prior to March 13, Hiibschman had been skiing at Salmonberry every day of the week.

Hiibschman had never taken the jump in question. She said, "Most of the time I just didn't feel like I was ready . . . I couldn't find anybody who would teach me, show me how to do it, and I wanted to be shown how to do it before I went and just tried it myself." The day of her accident, she decided to try the jump. Hiibschman watched at least four of her friends take the jump. While they were slightly more advanced than Hiibschman, she also observed people of her ability level go off the jump. Her friend Aaron Kelly specifically showed her how to ski the jump. He advised her, "stay down, stay forward." Hiibschman stated that she felt fairly familiar with the approach and the takeoff, gaining that familiarity from watching people as she skied beside them, looking at the jump, and reading ski magazines to learn what she was supposed to do.

Hiibschman stood in line to take this jump. As she approached the jump, she concentrated on what she was doing. Hiibschman states that she snowplowed all the way to keep her speed as low as possible and that she was going slower than the skiers on the other side of the hill. As she approached the jump, she leaned forward. She also straightened out her skis so they would not cross when she hit the jump.<sup>3</sup> However, Hiibschman stated, the jump

threw me way high, higher than I thought it would, and threw me back. And I was -- still upside down in the air, and I was struggling to get forward, lean forward as hard as I could and I just didn't have enough time. My butt and the backs of my skis hit the ground at about the same time and then I rolled down the hill -- slid actually.

Others confirmed that the jump "lofted you straight up into the air. . . ." Hiibschman testified that when she landed, her skis "were almost perpendicular to the ground." She fell and landed on her tail bone, resulting in permanent paralysis from the waist down.

At the time Hiibschman jumped, a big pit existed at the base of the jump, where people had been landing. The ski lift operator explained, "[A]t the end of the day you have this pit right here, this is an average distance where everybody's going to land, and they always fall and hit their butts on the snow and it

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3. Others dispute Hiibschman's account. Some say that she was traveling quickly, approaching the jump at "full speed," becoming rigid as she neared the jump, and leaning too far back which caused her ski tips to go straight up. Again, we construe the facts in Hiibschman's favor at this stage.

just keeps digging it out and digging it out." Hiibschman never observed the landing area nor did anyone mention to her anything about it. The lift operator further explained, "as you landed it was kind of a flat surface, not too much incline so you had. . . a hard landing . . . because if you have an incline it tends to be more soft because you glide off it, but instead you kind of landed hard, boom, you know." Another lift attendant also said the jump was dangerous because the landing was too flat and a skier would get too much air time for the jump. About half the people taking the jump, fell, some of whom were beginners.<sup>4</sup> Some skiers who fell also landed on their rear or back.

During testimony, when asked whether he thought the jump was dangerous, the ski lift operator answered, "Yes." He admitted that "I should have told them not to take the jump until they had learned how to ski better, because they kept getting behind on their skis. . . ."<sup>5</sup> However, while the ski patrol would destroy jumps it considered unsafe or mark them as out of bounds, this jump was not so destroyed or marked. An expert in ski area design and planning thought it was inappropriate to have this jump, or any

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4. The testimony varied widely on the success rate for navigating the jump. Some testimony indicated that hardly any of the skiers navigated it successfully and even intermediate skiers would fall. Yet, others said most skiers navigated this jump successfully.

5. The head of the ski patrol at the time of the accident stated, however, that to his knowledge, no other skier had ever been injured on that jump. The ski lift operator concurred.

jump, on a beginner's hill unless the jump were marked as appropriate only for more advanced skiers.

One other key fact exists regarding the accident. Before skiing, Hiibschman and her friends stopped at the Valdez Bottle Stop Liquor Store. Hiibschman estimated that she had consumed between one and one-half and three beers before the accident. She believed that she was in control at all times while skiing and that the beers made no difference to her skiing performance. Hiibschman asserted that she had taken four runs between her last drink of beer and the time of the accident and she did not fall on any of those runs. She said she was clear headed as she started her descent towards the jump. An emergency medical technician who subsequently attended Hiibschman stated, "I could smell alcohol on her breath, but she was not obviously intoxicated."

On the day of Hiibschman's accident, there were at least five inherent risk of skiing signs posted at Salmonberry Ridge: one on the outside of the lift shack, one by the door to the warming hut, one inside the warming hut, and one on the inside of each bathroom door.<sup>6</sup> These signs were posted in places the Parks &

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6. The signs read as follows:

INHERENT RISKS OF SKIING

AS REQUIRED BY ALASKA STATE STATU[T]E SEC. 09.65.135, THIS NOTICE IS TO INFORM YOU OF THE INHERENT RISKS OF SKIING. INHERENT RISKS OF SKIING MEANS DANGEROUS CONDITIONS WHICH ARE AN INTEGRAL PART OF THE SPORT OF SKIING. THESE RISKS INCLUDE BUT ARE NOT LIMITED TO:

(continued...)

Recreation Service thought were "the most prominent places on the ski hill."

Based on the Ski Act, the City moved for summary judgment, which the superior court granted in part and denied in part. The court held that Hiibschman's injuries resulted from "an inherent risk of skiing" which specifically included "variations or steepness in terrain," "surface . . . conditions," and/or "a skier's failure to ski within the limits of the skier's ability." The superior court rejected Hiibschman's contention that the statute's categories violated equal protection. However, the superior court found that a genuine issue of material fact existed regarding whether the signs were posted "at prominent locations within [the] ski area. . . ."

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6. (...continued)

- A. CHANGING WEATHER CONDITIONS;
- B. VARIATIONS OR STEEPNESS IN TERRAIN;
- C. SNOW OR ICE CONDITIONS;
- D. SURFACE OR SUBSURFACE CONDITIONS SUCH AS BARE SPOTS, FOREST GROWTH, AND ROCKS;
- E. COLLISIONS WITH LIFT TOWERS, OTHER STRUCTURES, AND THEIR COMPONENTS UNLESS THE SKIER IS ON THE LIFT;
- F. COLLISIONS WITH OTHER SKIERS;
- G. A SKIER'S FAILURE TO SKI WITHIN THE LIMITS OF THE SKIERS ABILITY.

LIMITATION ON CLAIMS ARISING FROM SKIING

A SKIER MAY NOT RECOVER FROM A SKI AREA OPERATOR FOR INJURY RESULTING FROM AN INHERENT RISK OF SKIING.

PLEASE BE SAFETY CONSCIOUS AND HAVE A GOOD TIME.

Hiibschman filed a motion for reconsideration. While the court concluded that artificial objects can qualify as an inherent risk of skiing within the statute, the court agreed with Hiibschman that negligent or defectively made or designed artificial conditions would not constitute an "inherent risk of skiing" and could be actionable in tort. However, the superior court stated that no competent evidence was presented to raise a genuine issue of material fact that the jump was negligently or defectively made or designed. The court also found it unnecessary to consider whether the slope was negligently maintained, instead treating the claim as one of negligent design.

Hiibschman then filed a second motion for reconsideration which the superior court granted in part, and denied in part. The court considered an expert affidavit stating that allowing a jump on a beginner hill was negligent and found that it raised a genuine issue of material fact as to whether the jump constituted an inherent risk of skiing. However, the court reaffirmed its prior conclusion that Hiibschman's attempt to ski over the jump was, as a matter of law, "a skier's failure to ski within the limits of the skier's ability." Thereafter the court submitted the issue of adequate signing to a jury. The jury returned a verdict in favor of the City on this issue. Hiibschman now appeals and the City cross-appeals.

I. DID THE JUMP CONSTITUTE AN INHERENT RISK OF SKIING OR A NEGLIGENTLY CREATED ARTIFICIAL CONDITION?

The superior court found that a genuine issue of material fact existed as to whether the jump constituted an inherent risk of skiing, i.e. whether the jump was a non-negligently created or maintained variation in terrain. The City, in its cross-appeal, is asking the court to hold, as a matter of law, that the jump constituted an inherent risk of skiing.<sup>7</sup> The City contends that the jump was a "variation[] or steepness in terrain" or a "surface condition[]." The City also asserts that the jump was open and obvious and knowingly encountered, and argues that Hiibschman's alcohol consumption magnified any risk inherent in the jump. It claims the greater weight of authority would deem the jump an inherent risk of skiing.

Hiibschman maintains that the jump was an artificial condition created by a neglected stack of brush cut and stacked by the City. Alternatively, she submits that it may have been built by children with shovels borrowed from the City employees, and intentionally groomed by the employees. Her theory of negligence is that this jump was inappropriate for a beginners' hill, particularly as no warning of its danger was given.

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7. The superior court's grant of summary judgment is reviewed as to whether a genuine issue of material fact exists and whether the moving party is entitled to judgment on the law applicable to the established facts. Sea Lion Corp. v. Air Logistics of Alaska Inc., 787 P.2d 109, 116 (Alaska 1990). All legal questions are afforded de novo review. See Walsh v. Emerick, 611 P.2d 28, 30 (Alaska 1980).

We affirm the superior court's determination that a genuine issue of material fact existed as to whether the jump constituted an inherent risk of skiing.

A. Evidence of Negligence

First, we note that the statute does not eliminate a ski area operator's liability for negligence. The legislative history of the statute makes this clear. Industry proponents of the bill stated repeatedly that they did not wish to avoid any responsibilities that were rightfully theirs, but they wanted to reduce nuisance claims. The statute was intended to bar recovery for those actions which only the skier could control and that were beyond the ski area operator's control. That the legislature intended to "clarify" the law and not change it, and that it sought to limit recovery for "inherent risks," reinforces our conclusion that industry liability for negligence was maintained.<sup>8</sup>

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8. The statement of legislative intent reads as follows:

The legislature finds that the sport of skiing is practiced by a large number of residents of the state and attracts a large number of nonresidents, significantly contributing to the economy of the state. It further finds that insurance carriers are increasingly reluctant to provide liability insurance protection to ski area operators and that the premiums charged by insurance carriers have risen sharply in recent years due to confusion as to whether a skier assumes the risks inherent in the sport of skiing when he participates actively in the sport. It is the intent of the legislature in enacting this Act to clarify the law in relation to skiing

(continued...)

Therefore, the Ski Act preserved the common law duties of ski area operators at the time of the act's passage. In Webb v. City and Borough of Sitka, we said,

The rule that we adopt is this: A landowner . . . must act as a reasonable person in maintaining his property in a reasonably safe condition in view of all the circumstances, including the likelihood of injury to others, the seriousness of the injury, and the burden on the respective parties of avoiding the risk.

561 P.2d 731, 733 (Alaska 1977).

Further, at the relevant time the law on assumption of risk had been clarified, restricting it as an affirmative defense, but leaving intact the concept in its "no duty" form. We explained,

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8. (...continued)  
injuries and the risks inherent in that sport and to provide that, as a matter of public policy, a person engaged in that sport may not recover from a ski area operator for injuries resulting from those inherent risks.

9. When AS 09.65.135 was passed in 1980, ski area operators were also under a statutory duty to avoid liability for negligence. Former AS 05.20.012, enacted in 1967, read:

Liability For Accidents In Skiing Areas. No owner or operator of ski equipment may be held liable for the negligence of persons other than employees who use designated skiing areas owned or controlled by him, unless the owner or operator has negligently maintained the designated skiing areas or has furnished or supplied defective equipment, the use of which is the proximate cause of any injury sustained by a person while engaged in skiing activities within the designated skiing areas. [§ 2 Ch. 25 SLA 1967] (Emphasis added).

The concept of assumption of risk was developed from the common law action of a servant against his master. The master was held to be not negligent if he provided a reasonably safe place to work, and the servant was said to have assumed the inherent risks that remained. In this sense assumption of risk was not an affirmative defense, but rather was another way of saying the master was not negligent; for the servant had the burden of proving that his injury resulted from a risk other than one inherent in a place that was a reasonably safe place to work.

Leavitt v. Gillaspie, 443 P.2d 61, 67-8 (Alaska 1968). We continued,

But where assumption of risk was a defense, the question was whether plaintiff had voluntarily entered into a situation involving obvious danger, with knowledge of the danger, and without regard to whether he had acted in such a situation as a reasonably prudent man would have acted. . . .

As a matter of policy we disapprove of a concept which could result in a situation where an accident victim, even though not contributorily at fault, could be barred from recovery because he knew or should have known of a negligently created risk. The just concept should be whether a reasonably prudent man in the exercise of due care would have incurred the risk despite that knowledge, and if so, whether he would have conducted himself in the manner in which the plaintiff acted in the light of all the circumstances, including the appreciated risk.

Id. Consequently, only the person who voluntarily and unreasonably assumed a negligently created risk was contributorily negligent and barred from recovery. Hale v. O'Neill, 492 P.2d 101, 103 (Alaska

1971); Young v. State, 491 P.2d 122, 125 (Alaska 1971); Bachner v. Pearson, 479 P.2d 319, 328-330 (Alaska 1970).<sup>10</sup>

While we believe the statute codified this case law in the ski context, it also aids trial courts by listing those risks which are considered inherent in the sport: those risks which are

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10. Given the law of assumption of risk codified by the statute, we reject the City's argument that assumption of risk bars Hiibschman's claim on the basis that the jump was open and obvious and knowingly encountered. Similarly, the City cites cases indicating that the assumption of risk doctrine codified by statute "renders the reasonableness of the skier's . . . behavior irrelevant." E.g., Schmitz v. Cannonsburg Skiing Corp., 428 N.W.2d 742, 744 (Mich. App. 1988). We reject this interpretation.

obvious<sup>11</sup> and necessary<sup>12</sup> to it. Evidence of negligence on the part of the ski area operators, however, takes the case out of the inherent risk of skiing context.

In the case at bar, it is not clear that the condition was an inherent risk of skiing, given that a jump is not specifically listed in the statute and its risk is not necessarily obvious or necessary.<sup>13</sup> Hiibschman stated she didn't think the jump was hazardous in the way it was designed or constructed before she went off of it. She said, "I didn't think it would be there if it was." She knew that the ski hill staff allowed the children to take the jump and therefore assumed it was safe for beginners.

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11. The frequent notice provided by trail signs makes the risk obvious.

12. A risk must be "necessary" to be an inherent risk of the sport.

The question of whether a risk is necessary relates to the issue of the operator's duty; . . . . If a given danger could be eliminated or mitigated through the exercise of reasonable care, it is not a necessary danger. Necessary dangers, therefore, must be those which cannot reasonably be eliminated by the area operator.

Assumption of Risk After Sunday v. Stratton Corp.: The Vermont Sports Injury Liability Statute and Injured Skiers, 3 Vermont L. Rev. 129, 141-2 (1978) (emphasis in original).

13. A risk not listed in the statute may still be an inherent risk of the sport if necessary and obvious. The risk must be subjectively obvious to the skier. The plaintiff must know of the risk's presence, understand its nature, and freely and voluntarily choose to encounter it. W. Keeton, Prosser & Keeton on Torts, § 68, at 486-87 (5th ed. 1984).

Our review of the record persuades us that evidence of negligence also exists in the case at bar. For example, one witness stated that the jump should be torn down because "it wasn't fit, suitable . . . because it was built to where you got too much air, and it was a flat landing." Hiibschman's expert witness stated that there should not have been any jumps at all on a beginner's slope and that if the ski area were intended for more than beginner skiers, the jumps should have been clearly marked as being suitable only for expert skiers. Others also testified that the jump was not safe for beginner skiers. In fact, the ski area had rules prohibiting artificial jumps, unless authorized by ski area management. With all inferences drawn in Hiibschman's favor, we conclude that genuine issues of material fact exist as to whether the jump was an inherent risk of skiing.

**B) Artificial versus Natural Conditions**

Hiibschman makes much of this distinction in her brief; the City, however, contends it is irrelevant to the legal question of whether the jump was a "variation[] or steepness in terrain," or a "surface . . . condition[]." The City maintains the origin of the jump is irrelevant, as it is an inherent risk of skiing even if it was an artificial condition.

An artificial item can produce an inherent risk of skiing. The statute covers, for example, collisions with lift towers. AS 09.65.135(c)(1)(E). Other artificial items may also produce inherent risks assuming they are not negligently designed

or maintained or assuming the risk is obvious and necessary (e.g. moguls on an expert trail).<sup>14</sup> See Rowett v. Kelly Canyon Ski Hill, Inc., 639 P.2d 6, 7 (Idaho 1981) (no negligence by ski area operator when night skier injured by skiing into traffic control device which was adequately illuminated and discernible at a distance); see also Smith v. Seven Springs Farm, Inc., 716 F.2d 1002, 1009 (3rd Cir. 1983) (advanced intermediate skier voluntarily assumed the risk when he skied down a trail marked most difficult, aware of an icy headwall lined by an unprotected telephone-like pole).

Therefore, we hold that the duty owed to a skier for a natural or an artificial condition is governed by Webb, 561 P.2d 731 (faulty sidewalk) and Moloso v. State, 644 P.2d 205 (Alaska 1982) (rock slide during state highway project). Primarily, the origin of the danger figures into the Webb calculus, as it affects the burden on the respective parties of avoiding the risk. It is also relevant to the issue of the ski resort's knowledge of the danger.

We also hold, however, that an artificially created jump can not be, as matter of law, "variations or steepness in terrain" or "surface . . . conditions." AS 09.65.135(a)(1)(B) or (D). While the statute does not differentiate explicitly between a ski operator's responsibility for artificial versus natural conditions,

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14. If, as the City contends, moguls originate from "terrain variations, skier patterns, and snow and ice conditions," then they are not artificial conditions intentionally put on the run comparable to the jump.

the items it lists, as well as the intent to retain liability for negligence, indicate that ski area operator protection from liability for artificial conditions should be construed narrowly. The legislative history explained, "The intent of this legislation is to clarify the law concerning the natural, inescapable risks that are a part of the sport of skiing and to specify that a ski area operator is not liable for injuries resulting from these inherent risks." (Emphasis added).

We find particularly compelling the testimony provided by the National Ski Patrol System, Inc. during the bill's consideration:

We agree with the concept of S.B. No. 470 which addresses the risks inherent in the sport of skiing. Ski area operators in the state definitely need protection from unjustified liability insurance claims associated with the natural risks of the sport. At the same time, we are concerned that skiers must also be adequately protected against any form of negligence caused by ski area operators. We believe with a few modifications, the proposed statute can achieve equitable protection for both ski area operators and the using public.

Suggested revisions to sec. 09.10.320 definitions are:

.....

2. (D). Eliminate the word "stumps". These are probably man induced obstacles that should be either eliminated, reduced, or marked as hazards by the ski area operator.

(Emphasis added). The recommendation to eliminate the word "stumps" was adopted, indicating that altering natural conditions (e.g. cutting a tree) removes them from the category of inherent

risks which are explicitly listed by the statute. Our conclusion is reinforced by the presence of the word "stumps" in the Utah ski statute, upon which the Alaska statute is modeled. UCA § 78-27-52(1). Similarly, the National Ski Patrol System, Inc. recommended the following, which was not adopted:

1. (C) Expand on snow or ice conditions to clarify that variations may occur because of weather factors and/or hill grooming.

For instance, standard grooming practices could cause variable snow surface conditions which skiers should accept as normal inherent risks on a managed ski run. Negligent grooming practices could cause unsafe conditions, such as leaving dangerous berms or cutbanks on groomed runs. Ski area operators should not be absolved from such negligence.

That the statute did not include snow variations from hill grooming as an inherent risk also reinforces the importance of this dichotomy.

Case law from other jurisdictions also emphasizes the importance of "natural conditions."

What the challenged statute does is to recognize that there are certain risks inherent in the sport of skiing that neither the skier nor the ski area operator can reasonably control. Indeed, the risk and often-rugged natural setting provides both the greatest attractions of skiing as well as the greatest elements of danger. Natural conditions, such as vegetation, snow cover and weather conditions, make trail conditions highly variable and difficult to manage.

Kelleher v. Big Sky of Montana, 642 F.Supp. 1128, 1130 (D. Mont. 1986) (emphasis added). Other cases identifying the "inherent risks of skiing" often speak generally of items such as "grade,

boundary, mid-trail obstructions, corners and varied conditions of the snow." Wright v. Mt. Mansfield Lift, Inc., 96 F. Supp. 786, 790 (D. Vt. 1951). This includes things such as roots, rocks, brush, ruts, and worn spots. Id. In Leopold v. Okemo Mountain Inc., the court spoke of the "apparent and necessary danger" inhering in "trees, rocks and adverse terrain which border every trail." 420 F. Supp. 781, 787 n.2 (D. Vt. 1976).

Here, conflicting evidence exists as to whether this jump was artificially made or naturally part of the terrain. This presents a factual question for jury resolution. The ski lift operator believed the jump was artificial because after it was removed, no dirt, alders or rocks were left. He saw just leveled snow, "nice clean snow." Nor was there newly moved brush around to indicate that it was formed by brush. Also, he had observed the hill prior to the snowfall and others had told him that the jump was an artificial structure. Some operators called the jump "Chet's jump," allegedly after the individual who built it. One witness testified that he saw Chet and another person build these jumps. Supposedly, each day, the employees would throw more snow on the jump to keep it built up, and would groom it or pack snow on it to change its characteristics. Testimony was presented that children made and groomed the jumps with the shovels given to them by employees at the hill. Yet, there was also evidence that it was not a jump, but rather a bump that was used as a jump. The person who removed the jump said it was created by alder.

It remains for the jury to determine whether the jump is a natural variation in terrain or surface condition. Thus, we conclude that the superior court's denial of summary judgment in this respect was correct.

II. WAS HIIBSCHMAN'S INJURY A RESULT OF A FAILURE TO SKI WITHIN HER ABILITY WITHIN THE MEANING OF AS 09.65.135(c)(1)(G)?

The superior court concluded as a matter of law that at the time of the accident Hiibschman was skiing beyond her ability, within the meaning of AS 09.65.135(c)(1)(G). Hiibschman argues that the trial court's reasoning produces absurd results, assumes the legislature intended to change tort liability, and is contrary to public policy. The City emphasizes that Hiibschman knew from personal observation what the jump entailed and knowingly assumed the risk. It argues that Hiibschman's alcohol consumption magnified any risk inherent in the jump.

The ski area operator is not liable for injuries resulting from inherent risks listed by the statute, including skiing beyond one's ability. A trial court should grant summary judgment only if no genuine issue of material fact exists. Sea Lion Corp. v. Air Logistics of Alaska, Inc., 787 P.2d at 116 (Alaska 1990). Here, a disputed issue of fact exists as to whether Hiibschman was skiing beyond her ability. We hold that the trial court erred in not submitting this issue to the jury.

For "skiing beyond one's ability" to bar an action, the skier must subjectively know he or she is skiing beyond his or her

ability, as an inherent risk of skiing must be necessary and subjectively obvious. On knowledge of risk, Prosser states,

[H]e must not only know of the facts which create the danger, but he must comprehend and appreciate the nature of the danger itself. . . . The standard to be applied is, in theory at least, a subjective one, geared to the particular plaintiff and his situation, rather than that of the reasonable man of ordinary prudence who appears in contributory negligence. If because of age or lack of information or experience, he does not comprehend the risk involved in a known situation, he will not be taken to consent to assume it. His failure to exercise ordinary care to discover the danger is not properly a matter of assumption of risk but of the defense of contributory negligence.

At the same time . . . the plaintiff will not be heard to say that he did not comprehend a risk which must have been quite clear and obvious to him.

Keeton, supra, at 487-88 (footnotes omitted and emphasis added); see also Rutter v. Northeastern Beaver County School Dist., 437 A.2d 1198, 1204 (Pa. 1981).

Viewing the evidence most favorably to Hiibschman, we find that skiing this jump was within her ability level. The jump was located on a beginners' slope. The ski lift operator described Salmonberry Ridge as "very beginner, very slow. There is no difficulty to the run." Hiibschman had taken some down-hill ski lessons before, and had evaluated how to take this jump. Hiibschman watched beginners taking the jump, some mastering it. Others who mastered it, like Aaron Kelly, had fallen the first three times he jumped it. She did not notice anything dangerous about the way the jump was designed or constructed. Although

Hiibschman was drinking, she said it did not affect her that day. Moreover, evidence was presented that teenagers and beginner skiers are not as able to accurately assess a degree of risk presented by a dangerous condition. Because contrary evidence was presented,<sup>15</sup> a contested issue of material fact exists. The question of whether Hiibschman was skiing beyond her ability should have gone to the jury.

**III. IS A CLAIM BARRED IF THE INJURY WAS CAUSED BOTH BY AN  
INHERENT RISK AND THE SKI AREA OPERATOR'S NEGLIGENCE?**

As the statute does not insulate a ski area operator from liability for negligence, once evidence of negligence exists, the case must go to the jury. However, the ski area operator is free to argue that the skier voluntarily and unreasonably assumed a negligently created risk.<sup>16</sup> The skier's negligence would then reduce recovery under the doctrine of comparative negligence.

In 1986, six years after the most recent inherent risk of skiing statute was passed (Ch. 80, SLA 1980), our legislature enacted a comparative negligence statute.<sup>17</sup> While we generally

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15. For example, Hiibschman's mother told Chet Simmons that the accident was Hiibschman's own fault, that she was intoxicated and skiing out of control. As to this statement, Hiibschman's mother later submitted an affidavit denying she had said it.

16. Skiing beyond one's ability, AS 09.65.135(c)(1)(G), would constitute an unreasonable assumption of a negligently created risk.

17. Alaska Statute 09.17.060 reads as follows:

(continued...)

give preference to a specific statute over a more general one, City of Cordova v. Medicaid Rate Comm'n., 789 P.2d 346, 352 (Alaska 1990), we must harmonize the two statutes if possible. State Dept. of Highways v. Green, 586 P.2d 595, 602 (Alaska 1978).

Ordinarily, an unambiguous statute is enforced as written without judicial construction or modification; however, this rule is not controlling when a seemingly unambiguous statute must be considered in conjunction with another act. Hafling v. Inlandboatmen's Union, 585 P.2d 870, 872 (Alaska 1978). In that case, we will examine the legislative history and adopt a reasonable construction which realizes legislative intent, avoids conflict or inconsistency, and gives effect to every provision of both acts. Id. at 873, 875, 877.

Lake v. Construction Mach., Inc., 787 P.2d 1027, 1030 (Alaska 1990).

As such, we must interpret the Ski Act so as not to nullify the comparative negligence statute. The reason for this was explained in Rini v. Oaklawn Jockey Club, 861 F.2d 502, 508 (8th Cir. 1988):

"[W]here assumption of risk coincides with contributory negligence, application of the doctrine operates to frustrate the very result that the comparative negligence statute was designed to achieve." Rutter v. Northeastern Beaver County School District, 437 A.2d at 1210 n. 6 (plurality). Dean Prosser also noted that the retention of this form of

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17. (...continued)

**Effect of contributory fault.** In an action based on fault seeking to recover damages for injury or death to a person or harm to property, contributory fault chargeable to the claimant diminishes proportionately the amount awarded as compensatory damages for the injury attributable to the claimant's contributory fault, but does not bar recovery.

assumption of risk after legislative adoption  
of comparative negligence

[i]n all probability . . . defeats the basic intention of the statute, since it continues an absolute bar in the case of one important, and very common, type of negligent conduct on the part of the plaintiff. It can scarcely be supposed in reason that the legislature has intended to allow a partial recovery to the plaintiff who has been so negligent as not to discover his [or her] peril at all, and deny it to one who has at least exercised proper care in that respect, but has made a mistake of judgment in proceeding to encounter the danger after it is known.

W. Prosser, *Prosser on Torts* §68, at 457 (4th ed. 1971) (footnote omitted).

We note that this approach has been adopted by Oregon. Jessup v. Mt. Bachelor, Inc., 792 P.2d 1232, 1233 (Or. App.), rev. denied 799 P.2d 646 (Or. 1990). The Oregon Court of Appeals held that while recovery is barred for an injury caused solely by an inherent risk of skiing, comparative fault applies when the injury is caused by a combination of an inherent risk of skiing and the ski area operator's negligence. Id.

The City disagrees with this approach, placing emphasis on a Utah statute similar to Alaska's Ski Act. The City cites From Wright to Sunday and Beyond: Is the Law Keeping Up With the Skiers? 4 Utah L. Rev. 885, 893-97 (1985):

By extending immunity to ski resorts when an "inherent risk" causes the injury, the Utah legislature has pre-empted the comparative negligence statute for those risks. Thus, where an injury results from a hazard

categorized as an "inherent risk," the skier injured in Utah is contributorily negligent per se, despite the comparative negligence statute.

Two critical facts, however, differentiate Utah's statute from the Alaska Ski Act. First, the Alaska statute omits language contained in the Utah statute: "[n]otwithstanding anything in Sections 78-27-37 through 78-27-43 [78-27-38 is the specific provision adopting comparative negligence] to the contrary, no skier may make any claim against, or recover from, any ski area operator for injury resulting from any of the inherent risks of skiing." Utah Code Ann. 78-27-53 (1953). Second, Alaska's comparative negligence statute was passed after the Ski Act, whereas in Utah it was passed before the ski statute. The statutory enactment of comparative negligence in Alaska after the inherent risk of skiing statute, without acknowledging the Ski Act, indicates a legislative intent to allow principles of comparative negligence into the ski context. Cf. In re Tapp, 16 B.R. 315 (Bankr. Alaska 1981).

Moreover, because Alaska had comparative negligence as a matter of case law as early as 1975, e.g. Kaatz v. State, 540 P.2d 1037, 1049 (Alaska 1975), the Ski Act's failure to specifically eliminate comparative negligence in the ski context, as Utah did, indicates that the legislature did not intend to exclude comparative negligence analysis. Our conclusion is reinforced by the statute's legislative history, which indicates that the statute was not intended to eliminate ski area operator's liability for negligence.

On remand, questions of whether Hiibschman's actions were reasonable, including the relevance of her drinking and her knowledge of the risk of taking the jump, will be relevant to the issue of comparative negligence.

IV. WERE THE POSTED SIGNS INSUFFICIENT AS A MATTER OF LAW TO SATISFY AS 09.65.135?

The superior court found that a genuine issue of material fact existed as to whether the signs were posted at prominent locations in the ski area. Hiibschman contends that the posted signs were insufficient as a matter of law, for they were not "trail signs" nor were they posted at "prominent locations" as required by statute.

We find Hiibschman's arguments without merit. The superior court left for the jury the general issue of the adequacy of notice and signing. The issues of "the size, content, number, location, and prominence of the signs" were all tried by the jury, and the evidence in the record supports the verdict. Steven Weber, who was the Director of the Parks and Recreation Department in Valdez at the relevant time, explained that he had posted the signs so that "the average skier -- or the skier participating in the activity could stop and read the sign." It was typed in bold letters with some underlining. While there were no inherent risk of skiing signs on the hill itself, Weber stated:

[W]e felt . . . the best place to do that was at the bottom of the hill where most of the activity took place, where . . . the skiers had to initially go by to get to the ski lift. Posting signs throughout the hill . . . didn't really meet that requirement in my eyes. I felt that the intent or the spirit of this statute here was to inform the skiers, and I felt the best way to inform them was prior to skiing and not after skiing. And, skiers would traditionally normally use the restroom prior to skiing, use the warm-up hut prior to skiing to put their boots on and then . . . by the nature of the way they travelled to the

ski lift . . . we had a couple of signs posted there they would have to go by in order to get to the ski lift and actually load on the lift.

Although no "trail" signs were posted, Salmonberry Ridge is just one small open hill; there are no real, designated trails as such. After skiers get off of the lift, they have the option of going to the right or going to the left, skiing each respective side of the hill. While others, including Hiibschman, said that they saw no signs, the jury found that such signs were posted. John Wiland, the mountain manager when Salmonberry Ridge opened, testified that signs were posted in each of the outhouses, going into the warming hut, on the lift shack, and at the top of the lift shack. Theresa Day was skiing on the day of Hiibschman's injury and recalls seeing signs posted in the outhouse and in the ski tow area. Aaron Kelly, who also was skiing with Hiibschman, saw the signs posted on the inside of the outhouse and on the front of the warming hut. Therefore, we affirm the superior court's ruling that genuine issues of material fact existed as to whether requisite signs were posted at prominent locations in the ski area.<sup>18</sup>

**V. DID THE SUPERIOR COURT ABUSE ITS DISCRETION IN GRANTING THE PROTECTIVE ORDER RELATING TO HIIBSCHMAN'S PRIOR DWI CONVICTION AND/OR PRIOR DRINKING EXPERIENCE?**

The superior court prohibited the City from discovering or using evidence relating to Hiibschman's prior Driving While

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18. Our resolution of the merits of this issue makes it unnecessary to discuss the City's argument that the issue is improperly before the court.

Intoxicated (DWI) conviction and prior drinking experience pursuant to Evidence Rule 402<sup>19</sup> and 403.<sup>20</sup>

We reverse a trial court's decision on the admission of evidence only for an abuse of discretion. Atkinson v. State, 611 P.2d 528, 532 (Alaska), cert. denied 449 U.S. 876 (1980). The City believes that such an abuse occurred; it argues that the probative value of the evidence far exceeds its prejudicial effect. The City intends to use the evidence to establish that Hiibschman and her mother knew of the adverse effects the alcohol had on Hiibschman's functioning. The City claims the evidence shows Hiibschman's lack of judgment on the day of the accident, as well as her mother's own negligence in permitting Hiibschman to drink alcohol. It also shows Hiibschman's tolerance level for alcohol.<sup>21</sup>

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19. Evidence rule 402 states,

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States or of this state, by enactments of the Alaska Legislature, by these rules, or by other rules adopted by the Alaska Supreme Court. Evidence which is not relevant is not admissible.

20. Evidence Rule 403 states,

Although relevant, evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

21. Hiibschman was arrested in December 1985 for DWI. She entered a plea of no contest, receiving a sentence of a \$250 fine, 72 hours in jail, and alcohol screening. She claimed that the  
(continued...)

We hold that the superior court did not abuse its discretion in issuing the protective order. While the City argues that the court's citation to Rules 402 and 403 indicates that the court found "the evidence relevant under 402, but nonetheless excluded it under Rule 403. . . .", the sparse reference by the superior court does not conclusively support the City's interpretation. The court also may have found the evidence irrelevant under Evidence Rule 402.

We conclude that the evidence does have marginal relevance. Hiibschman admits knowledge about the effects of alcohol. She has taken Freshman Health in school where she learned about the amount of alcohol that impairs one's judgment. While Hiibschman claims she did not drink enough to impair her judgment, the excluded evidence is only slightly relevant to this point. In Dyer v. State, the court of appeals said that evidence used to impeach a witness by showing that he was an alcoholic at the time of the incident about which he was testifying "was only tangentially probative of how much alcohol he actually drank that particular night." 666 P.2d 438, 451 (Alaska App. 1983). Moreover, other evidence exists which suggests Hiibschman's consumption and impairment. The availability of alternative

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21. (...continued)  
experience made her very careful about drinking. The incident involved drinking some of her grandfather's beer and putting her mother's truck into a ditch. She alleges the truck ended up in the ditch not because of her alcohol consumption, but because the street had about four inches of glare ice on it. When she touched the brakes to stop at the stop sign, the truck slid into the ditch. She recognizes that her judgment was impaired.

evidence goes to the probativeness of the evidence in dispute. Finally, this information is not relevant to the comparative negligence of Hiibschman's mother, for she did not give Hiibschman alcohol on the day in question.

The cases cited by the City are unhelpful. This type of relevance question, requiring the balancing of prejudice and probativeness, is a fact specific inquiry. The potential prejudice, that the jury would punish Hiibschman for her prior conduct, may outweigh the evidence's marginal relevance. The superior court did not abuse its discretion.<sup>22</sup>

#### CONCLUSION

We AFFIRM in part, and REVERSE in part, and REMAND the case for a new trial.

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22. As to the other issues on appeal, we need not address them. The City concedes that expert testimony is not essential if the matter is remanded. As to Hiibschman's argument that AS 09.65.135 violates equal protection under the Alaska Constitution, our construction of AS 09.65.135 makes resolution of this issue unnecessary.



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SKI SAFETY AND LIABILITY

§ 33-44-104

trail or portion thereof designated by the ski area operator for the purpose of competition.

(3) "Conditions of ordinary visibility" means daylight and, where applicable, nighttime in nonprecipitating weather.

(4) "Passenger" means any person who is lawfully using any passenger tramway.

(5) "Passenger tramway" means a device as defined in section 25-5-702(4), C.R.S.

(6) "Ski area" means all ski slopes or trails and other places under the control of a ski area operator and administered as a single enterprise within this state.

(7) "Ski area operator" means "operator" as defined in section 25-5-702(3), C.R.S., and any person, partnership, corporation, or other commercial entity having operational responsibility for any ski areas, including an agency of this state or a political subdivision thereof.

(8) "Skier" means any person utilizing a ski area for the purpose of skiing or for the purpose of sliding downhill on snow or ice on skis, a toboggan, a sled, a tube, a ski-bob, or any other device.

(9) "Ski slopes or trails" means those areas designated by the ski area operator to be used by skiers for any of the purposes enumerated in subsection (8) of this section. Such designation shall be set forth on trail maps, if provided, and designated by signs indicating to the skiing public the intent that such areas be used by skiers for the purpose of skiing. Nothing in this subsection (9) or in subsection (8) of this section, however, shall imply that ski slopes or trails may not be restricted for use by persons using skis only or for use by persons using any other device described in subsection (8) of this section.

(Laws 1979, S.B.203, § 1.)

Notes of Decisions

Ski area

1. Ski area

Three-year statute of limitations period applicable to actions against "ski area operator" was not applicable to action by patron who

was injured in parking lot owned by ski operator, while she was waiting for shuttle bus; "ski area" as defined by statute did not include parking lot not directly devoted to skiing activities. McLean v. Winter Park Recreational Ass'n., App.1988, 762 P.2d 751.

§ 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 25-5-710(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.

(3) All rules adopted or amended by the passenger tramway safety board on or after July 1, 1979, shall be subject to sections 24-4-103(8)(c) and (8)(d) and 24-34-104(9)(b)(II), C.R.S.

(Laws 1979, S.B.203, § 1; Laws 1980, S.B.109, § 28; Laws 1981, S.B.317, § 10.)

**Law Review Commentaries**

The Development of the Standard of Care in Colorado Ski Cases. James H. Chalot and Lea A. Kroll, 15 Colo.Law. 373 (March 1986).

**Library References**

Carriers §306(1).

Negligence §6.

Theaters and Shows §6(4), (19).

WESTLAW Topic Nos. 70, 272, 376.

C.J.S. Carriers § 701 et seq.

C.J.S. Negligence § 19.

C.J.S. Theaters and Shows §§ 39, 47.

**Notes of Decisions**

**Instructions 1**

**1. Instructions**

Evidence would support either conclusion that skier was negligent per se in not skiing within his ability or that skier was presumptively negligent in not keeping proper lookout or maintaining control, in action wherein skier

sought to recover for injuries allegedly caused by ski corporation's negligence in allowing bare spot to exist on its ski slope; therefore, trial court could give instruction on general rule of negligence per se and instruction on statutory rebuttable presumption of negligence of skier who collides with natural object. Scott v. Silver Creek Ski Corp., App.1988, 767 P.2d 806.

**§ 33-44-105. Duties of passengers**

(1) No passenger shall board a passenger tramway if he does not have sufficient physical dexterity, ability, and knowledge to negotiate or use such facility safely or until such passenger has asked for and received information sufficient to enable him to use the equipment safely. A passenger is required to follow any written or verbal instructions that are given to him regarding the use of the passenger tramway.

(2) No passenger shall:

(a) Embark upon or disembark from a passenger tramway except at a designated area except in the event of a stoppage of the passenger tramway (and then only under the supervision of the operator) or unless reasonably necessary in the event of an emergency to prevent injury to the passenger or others;

(b) Throw or expel any object from any passenger tramway while riding on such device, except as permitted by the operator;

(c) Act, while riding on a passenger tramway, in any manner that may interfere with proper or safe operation of such passenger tramway;

(d) Engage in any type of conduct that may contribute to or cause injury to any person;

(e) Place in an uphill track of a J-bar, T-bar, platter pull, rope tow, or any other surface lift any object that could cause another skier to fall;

(f) Embark upon a passenger tramway marked as closed;