

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8366 SENATE LABOR & COMMERCE

CHAPTER 8

Weapons

ARTICLE 1. WEAPONS OFFENSES

Am. Jur. 2d, ALR and C.J.S. references.
— Fact that gun was unloaded as affecting criminal responsibility, 68 ALR4th 507.

Fact that gun was broken, dismantled or inoperable as affecting criminal responsibility under weapons statute, 81 ALR4th 745.

§ 6-8-102. Use or possession of firearm by person convicted of violent felony; penalties.

"Possession," for purposes of section, is physical control or custody of weapon, or immediate access to it. Additionally, any such possession of a weapon by persons convicted of violent felonies must be knowing to be unlawful. *McInturff v. State*, 808 P.2d 190 (Wyo. 1991).

Effect of setting aside prior felony conviction. — Although the defendant's felony conviction was set aside and the accusations or information dismissed pursuant to California's § 1203.4 (completion of probation), that did not preclude its use against the defendant. The

grace extended to the defendant by the state of California did not go so far as to extinguish his conviction for all purposes. Since the California felony existed for purposes of this section, there existed no plausible reason for the defendant to withdraw his guilty plea. *Reay v. State*, 800 P.2d 499 (Wyo. 1990).

Am. Jur. 2d, ALR and C.J.S. references.
— What amounts to "control" under state statute making it illegal for felon to have possession or control of firearm or other dangerous weapon, 66 ALR4th 1240.

ARTICLE 2. FIREARMS REGULATION

§ 6-8-201. Firearms register; required to be kept; information to be shown.

Am. Jur. 2d, ALR and C.J.S. references.
— Validity of state gun control legislation

under state constitutional provisions securing the right to bear arms, 86 ALR4th 931.

CHAPTER 9

Miscellaneous Offenses

Article 2. Other

Sec.
6-9-201. Trespass on closed or unsafe areas within ski areas; penalty; exceptions.

Article 3. Skier Safety

Sec.
6-9-301. Skier safety; skiing while impaired; unsafe skiing; collisions; penalties.

ARTICLE 2. OTHER

§ 6-9-201. Trespass on closed or unsafe areas within ski areas; penalty; exceptions.

(a) A person is guilty of a misdemeanor punishable by a fine of not more than one hundred dollars (\$100.00) if he:

- (i) Skis on a slope or trail that has been posted as "closed";
- (ii) Knowingly enters upon public or private lands from an adjoining ski area when the lands have been closed by the owner and posted as closed by the owner or by the ski area operator; or
- (iii) Intentionally enters state or federal land leased and in use as a ski area, knowing:

(A) The lessee of the premises has designated the land as an unsafe area; or

(B) The land has been posted with warning signs, prohibiting entry, which are reasonably likely to come to the attention of the public.

(b) This section does not apply to peace officers, national park or forest service officers, or persons authorized by the lessee of the premises. (Laws 1982, ch. 75, § 3; 1989, ch. 202, § 1.)

The 1989 amendment, effective June 8, 1989, in subsection (a), restructured the former introductory paragraph so as to constitute the present introductory paragraph and paragraph

(iii), inserted present paragraphs (i) and (ii) and redesignated former paragraphs (i) and (ii) as present subparagraphs (A) and (B) in paragraph (iii).

ARTICLE 3. SKIER SAFETY

§ 6-9-301. Skier safety; skiing while impaired; unsafe skiing; collisions; penalties.

(a) 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 illicit controlled substance or other drug as defined by W.S. 35-7-1002.

(b) No person shall ski in reckless disregard of his safety or the safety of others.

(c) No skier involved in a collision with another 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 ski patrol except for the purpose of securing aid for a person injured in the collision, in which event the person leaving the scene of the collision shall give his name and current address as required by this subsection within twenty-four (24) hours after securing aid.

(d) Any person violating this section is guilty of a misdemeanor punishable by imprisonment for not more than twenty (20) days, a fine of not more than two hundred dollars (\$200.00), or both. (Laws 1989, ch. 202, § 2.)

Am. Jur. 2d, ALR and C.J.S. references.
— Products liability: skiing equipment, 76 ALR4th 256.

CHAPTER 10

Sentencing

Article 1. Generally

Sec.

6-10-104. Court to fix punishment within prescribed limits.

Sec.

6-10-107. Minimum term of imprisonment.

6-10-109. Sentences for felonies.

ARTICLE 1. GENERALLY

§ 6-10-101. "Felony" and "misdemeanor" defined.

Cited in *Perry v. State*, 821 P.2d 1273 (Wyo. 1991).

§ 6-10-104. Court to fix punishment within prescribed limits.

Within the limits prescribed by law, and subject to W.S. 7-13-108, the court shall determine and fix the punishment for any felony or misdemeanor, whether the punishment consists of imprisonment, or fine, or both. (Laws 1982, ch. 75, § 3; 1992, ch. 25, § 3.)

The 1992 amendment, effective April 1, 1992, inserted "and subject to W.S. 7-13-108."

Conflicting legislation. — Laws 1992, ch. 25, § 5, provides: "Any other act adopted by the Wyoming legislature during the same

session in which this act is adopted shall be given precedence and shall prevail over the amendments in this act to the extent that such acts are in conflict with this act."

§ 6-10-106. Rights lost by conviction of felony; restoration.

Convicted felon allowed to run for office. — Article 6, § 6, Wyo. Const., and this section provide that a person who has been convicted of a felony is prohibited from holding public

office. They do not say such person is prohibited from running for office. *Hamburg v. State*, 820 P.2d 523 (Wyo. 1991).

HOW AND WHAT TO SAY TO YOUR LEGISLATORS

A. How to Communicate with Your State Representatives and Senators

There are several ways to contact your legislators to encourage them to support the new legislation regarding the inherent risks of skiing. You can call them in Juneau; you can write them a letter; you can call the Legislative Affairs office in your town to send them a 50-word public opinion message. Use the enclosed list to find names, addresses and telephone numbers. The most effective method of communicating with legislators is by letter. Here are some very important tips to keep in mind when writing your letter:

1. Make sure the letter is legible. Neatly handwritten letters are fully acceptable, but typing your letter is better.
2. Limit yourself to one page and one topic. Legislators are very busy people, and they don't have time to read long letters.
3. Tell your legislator what you want him or her to do: "Please support House Bill 491 and Senate Bill 403 regarding the inherent risks of skiing."
4. Briefly tell your legislator why you want him or her to support these bills. Choose a few of the ideas given below, or use your own ideas to explain why the legislation is important to you and other Alaskans.
5. Do not use bad language, make threats, or use other inappropriate (and ineffective) tactics. Legislators listen when their constituents make their voices heard in a rational manner.
6. Be sure you send a letter to all of the legislators who represent your area, both representatives and senators. If you don't know who your legislators are, call the Legislative Affairs office.

B. What to Say to Your Legislators

**** TELL THEM TO SUPPORT HOUSE BILL 491 AND SENATE BILL 403. ****

When you write to your legislators, you may wish to point out one or more of the following facts:

- ☛ The sport of skiing serves important social and individual needs in Alaska, given the predominance of the winter season. Skiing contributes to the mental and physical health and well-being of Alaskans. Skiing is one of the few Alaska outdoor winter activities which families can enjoy together. Special programs allow mentally and physically challenged Alaskans to enjoy the sport of skiing.
- ☛ Skiing is an exhilarating sport, the enjoyment of which includes several components. The importance of these factors vary with each skier, but include exercise, enjoyment of the outdoor environment, physical and mental challenge, companionship, and the excitement of taking physical risks. Racing programs provide athletic competition and physical conditioning to our young people.

over

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FAX MEMORANDUM

TO: Mr. K and John Heiser
FROM: Mitchell D. Gravo
RE: Alyeska Ski Bill
FAX: 783-2814
DATE: January 16, 1993

Mr K and John: This is a copy of a memo that I sent on Saturday to Dennis Lavey, Forrest Paulson, Bill Dugdalo, Max Lowe, Ralph Nogal and Ava Goodman. Please help me follow up with these hotel owners so we can get their testimony on Tuesday.

This Tuesday at 1:30 P.M. at the Legislative Conference Room in Anchorage, there will be a hearing on the Alyeska Ski Resort's Skier Liability Bill. This bill is sponsored by Senator Kelly and the hearing will be in his committee. Alyeska needs as much support from the industry as possible on this issue. The purpose of this memo is to request that you attend that meeting on Tuesday and testify on behalf of this bill. Your message should be simple; This bill will increase economic development and tourism in the state because it will put our skier liability laws on equal footing with those laws in the other western United States. Alaska will then be able to compete with these states and Canada on an equal footing. This will benefit the big downtown hotel because many of the visitors headed to Alyeska will overnight in Anchorage coming and going from their trips to the resort.

Please also draft a letter in support of this legislation and fax it to me at 586-1033. The bill number is SB44: Civil Liability for Skiing Accidents.



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.



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.

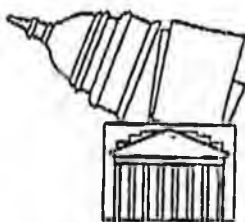
- Alaska is in the first stages of developing winter tourism. We need a positive legal climate to encourage winter recreation opportunities, including alpine and nordic skiing.
- Twenty-six (26) states have laws concerning the inherent risks of skiing. All of these state laws require each skier to accept the risks of participating in the sport.
- Alaska alpine ski areas have between 250,000 and 350,000 skier visits each season. It is more difficult to count nordic skier days, but the total is certainly more than the number of alpine skier days.
- Skiing is one of the few sports in which Alaskans can excel in national and international competition, including the Olympics.



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.

- Mother Nature made the mountains. Alpine ski area operators can only sell access to the mountain environment through ski lifts and, in some areas, snowmaking equipment. Ski area operators offer skiers the opportunity to challenge themselves physically and mentally in a steep, natural, cold, and often harsh environment.

- 42 All sports have inherent risks of injury, and skiing is no exception. These risks both make the sport attractive and enjoyable, and also occasionally result in injury.
- 43 Falling is an ordinary, obvious and necessary component of the sport. All skiers, even expert skiers, fall on all kinds of terrain and in all kinds of conditions. Skiers can be injured while skiing due to the intrinsic risks of the sport, whether natural or man-made. Most injuries are minor, but a very few injuries are serious, even fatal. These injuries are the ordinary, though unfortunate, consequences of the skier's decision to take part in the sport. Skiing can never be a "risk-free" experience.
- 44 Skiing is conducted in the outdoor winter environment. This environment includes large and diverse mountainous terrain; severe weather conditions; rapidly changing snow conditions; and rocks, trees, forest growth and forest debris. Alpine ski areas add ski lifts, snowmaking equipment, buildings, signs, fences, and other structures essential to the downhill sport.
- 45 All ski area operators try to reduce the chances of injury, but skiing will never be a "safe" sport. Operators should be encouraged, not discouraged, from making changes to the natural environment which enhance the skiing experience and reduce the risks of injury.
- 46 Ski area operators can do very little to alter the natural conditions which occur in the outdoor alpine or nordic environment. Unlike other sports where the participants are charged a fee -- sports like hockey, bowling, racquetball, tennis, golf, etc. -- a large part of the attraction of skiing is the variable and challenging environment.
- 47 Ski area operators provide significant contributions to the economic well-being of Alaska. New ski area capital projects include the new chairlifts at Ski Land, Birch Hill and Kodiak, and the new hotel and lift facilities at Alyeska.
- 48 Ski area operators will have a difficult time obtaining appropriate insurance at reasonable rates if Alaska does not have an effective law requiring skiers to take responsibility for themselves. Ticket prices will reflect any increase in the cost of buying insurance.



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.

SKI SAFETY NEWS®

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IN THIS ISSUE:

- Page 1: Clover v. Snowbird, inherent danger statute allows negligence claims.
- Page 4: Duty of Ski Patrol to identify reckless skiers for injured guests.
- Pages 5 - 6: Case Highlights, Verdict in skier/skier collision case; Petition for Certiorari pending before U.S. Supreme Court in Michigan case.
-

UTAH INHERENT DANGER STATUTE ADMITS TRADITIONAL CLAIMS Skiers assume only risks integral to the sport

The Utah Act

Utah's Inherent Risks of Skiing Statute served as a model for several of the recently enacted special statutes extending immunity to ski area operators. In Utah a skier cannot recover from a ski area operator for an injury caused by an inherent risk of skiing. Inherent risks of skiing are defined by statute as "those dangers or conditions which are an integral part of the sport of skiing including, but not limited to . . . variations in steepness and terrain . . . collisions with other skiers, etc." Utah Code Ann. Sections 78-27-51 & 52(1).¹

One would think it futile to allege claims against a Utah ski area operator for negligent design, failure to use ordinary care in marking or maintenance or, for instance, in allowing a blind jump to exist.

Yet, in Clover v. Snowbird Ski Resort, 808 P.2d 1037 (Utah 1991) Utah Chief Justice Gordon R. Hall, writing for a unanimous Supreme Court, held that the law does not "abrogate a skier's traditional right to recover for injuries caused by ski area operators' negligence." Clover, 808 P.2d at 1046.

¹Colorado's Ski Safety Act of 1979 was amended in 1990 to add identical language, e.g. that "'Inherent dangers and risks of skiing' means those dangers or conditions which are an integral part of the sport of skiing . . ." C.R.S. 33-44-103(10).

Clover v. Snowbird & Zulliger

Margaret Clover was skiing at Snowbird on December 5, 1985 when Chris Zulliger took a blind jump over a crest and collided into her, unseen below. At the time, Zulliger worked for Snowbird at its restaurants. Before the accident he had been on duty at the mid-mountain restaurant. Then he went skiing. After four runs with friends it was time to return to work at the base area restaurant. As he skied to the bottom to return to work he collided into Clover.

Clover argued that Zulliger was within the course and scope of his employ when he injured Clover. She claims the accident was caused by Zulliger's carelessness in taking the jump without checking for skiers below. Zulliger was skiing fast. A slow sign had been posted above the jump and ski patrol had often discouraged jumping where the accident had occurred.

Clover next claimed that Snowbird had been negligent, independently of its relationship to its employee, in the design and maintenance of the resort. It had allowed the blind jump to exist, which combined with Zulliger's negligence to cause the accident.

Third, she claimed that Snowbird had a duty to train and supervise its employees to reasonably avoid their reckless skiing. Clover argued Snowbird had not sufficiently discharged this duty and this failure further contributed to the accident.

At Trial

The trial court had dismissed Clover's complaint against Snowbird.

First, the trial judge reasoned that Zulliger was free skiing at the time. Therefore, Snowbird could not be held responsible under the rule of law that generally holds an employer liable for the negligence of an employee committed in the course and scope of employment.

Secondly, the Inherent risks of Skiing Act barred Clover's claim that Snowbird was negligent in failing to mark or grade out the blind jump. Collisions with skiers, or variations in terrain, such as a blind jump were risks "inherent" to the sport and therefore no claim could be made against Snowbird.

On Appeal

The Utah Supreme Court disagreed with the trial judge, ordered that Clover's complaint was to be reinstated and that a jury would need to decide the case.

In Utah, the question of whether an employee's conduct occurs within the course and scope of employment is generally a question for a jury unless the facts are so clear as to admit no dispute. In Clover, the Court found disputed facts to allow the case to be submitted to the jury. The court held that the issue of whether the resort was responsible for Zulliger's negligence presented a question for a jury: was Zulliger in the course and scope of his employment when he skied fast through a marked slow skiing area and jumped unable to see cross traffic below?

The Court noted that Zulliger was returning to work at the time of the accident; Snowbird provided him and other food service employees with season lift

passes; employees were required to ski to and from the mid mountain restaurant; his route, on which the accident occurred, was one often taken by Snowbird employees to return to the base area to return to duty.

The Court concluded that Zulliger was engaged in actions which were of a "general kind that the employee is employed to perform," and, therefore, the Court held that a jury would need to determine if Snowbird would be held responsible.

Seizing upon the words "integral part of the sport of skiing", the Supreme Court determined that ski area operators are protected from claims to recover for the dangers enumerated as "inherent" only to the extent those dangers could not be eliminated, in the exercise of ordinary care, by the ski area operator. A skier injured as a result of a risk set out in the statute is not necessarily barred from a claim. The skier may still argue that the risk was not integral or necessary to the sport.

The Court's reasoning was founded upon the doctrines of primary and secondary assumption of the risk. The doctrine of "Primary" assumption of the risk holds that no duty is owed to mitigate dangers which the participant willingly accepts or which, in the exercise of reasonable care, cannot prevent. "Secondary" assumption of the risk holds that a duty exists to mitigate dangers. Claims are only barred to the extent the participant unreasonably accepts a danger, even though that danger may arise through the negligent conduct of a third party.

Historically, ski cases have been controlled by the application or exception of the facts to these assumption of the risk doctrines referred to in ski cases as the inherent danger doctrine.² Currently, skiing and other recreational tort litigation has sharply focused current attention on assumption of the risk given the national debate on tort limitations. "Assumption of Risks" The National Law Journal Vol. 14 No. 8 Page 1 (10/28/91).

Once Utah determined that a case by case study was necessary, even under the Inherent Risks Act, the court turned to the particular risk apparent in the case. It concluded that the existence of a blind jump with a landing area located at a point where skiers enter the run is not an essential characteristic of an intermediate run. Clover had presented evidence that Snowbird knew that the jump created an unreasonable hazard, and that Snowbird had failed to use reasonable care to eliminate the hazard.

Comment

Clover is a well written, unanimous opinion. It is the first case decided under the model statute advanced by the industry. It accurately traces the history of the primary versus secondary assumption of the risk. It is the perfect contrast to the admittedly "tortured and unjust" opinion published by a sharply divided Idaho Supreme Court in Northcutt v. Sun Valley, 787 P.2d 1159 (1990). SSN V. II #2.

The West Virginia Supreme Court has also completely overlooked the distinction between the essential risks of skiing and those risks which the area operator could reasonably mitigate. Lewis v. Canaan Valley Resorts, Inc., ___ W. Va. ___, 408 S.E.2D 634 (1991). According to Lewis the exclusive duties of the ski

² Wright v. Mt. Mansfield Lift, Inc., 98 F. Supp. 786 (D. Vt. 1951).

area operator are set out in West Virginia Skiing Responsibility Act. W. Va. Code 20-3A-3 [1984]. West Virginia reached this determination despite language nearly identical to that of Utah's e.g. inherent risks are those which "are essentially impossible to eliminate by the ski area operator" and even broader language that ski area operators are required to "maintain the ski areas in a reasonably safe condition, except" for enumerated inherent risks such as variations in terrain, collisions etc.

Three Rocky Mountain states have now examined the new statutory trend specifically enacted after vigorous lobbying by the ski industry. Montana has found unconstitutional portions of the Montana Ski Safety Statute, MCA 23-2-731. Montana reasoned that it was unconstitutional to place the entire risk of collisions upon skiers. Irrespective of the importance of the economic vitality of the ski industry to Montana's economy, there is no rational relationship between this purpose and placing the burden of all risks upon skiers. Brewer v. Ski-Lift, Inc., 762 P.2d 228 (1988) SSN V.I., #1. Utah's interpretation has the same effect as the Montana opinion. The Rockies¹ are our most popular skiing region. In the region, only Idaho and its divisive court, has determined to expand the inherent danger rule to include risks which, in the exercise of reasonable care, could be mitigated and improve skier safety. Colorado, the traditional leader in the field, has yet to cast its vote.

SKI PATROL MAY HAVE DUTY TO OBTAIN IDENTIFICATION OF RECKLESS SKIERS

Maria Burgener was the victim of a reckless skier who collided into her at Keystone. Ski Patrol responded and Burgener pointed out to Patrol the woman who had collided into her. Patrol however allowed the reckless skier to leave the scene without obtaining her name and address. Keystone's maps and safety brochures state that a skier involved in a collision is required to identify him or herself to Keystone employees.

Judge Terry Ruckreigle of Summit County Colorado wrote:

"CRS 33-44-109(1C) provides that a skier involved in a collision must give his name and current address to an employee of the ski area operator or a member of a voluntary ski patrol. There is no duty under the Act for a skier involved in a collision to give his name and address to anyone else . . . The Court declines to find a general duty of the ski area operator or ski patrol to collect names and addresses of colliding skiers where injuries result.

However, under the specific facts alleged in this case, i.e. reliance by the Burgeners on the ski patrol in obtaining the name and address of the offending skier after (she was pointed out) combined with the representations in Keystone literature read by the Burgeners, the Court finds that the ski patroller assumed a duty to obtain the name and address of the alleged offender.

¹Michigan, we're embarrassed to report, has held that its statutory list of inherent dangers are conclusively risks borne by the skier. Schmitz v. Cannonsburg, 428 N.W.2d 742 (1988); Grieb v. Alpine Valley Ski Area, Inc., 400 N.W.2d 653 (1986).

Under the theory of vicarious liability, Keystone could be found liable to the Burgeners for loss of the opportunity to be compensated by the skier involved in the collision."

Burgener v. Keystone, Summit County District Court, Colorado, 90 CV 215 (9/15/91) Order Denying Defendant's Motion for Summary Judgment.

The reader may want to review Phillips v. Wild Mountain Sports, Inc., 439 N.W. 2d 58 (Minn. App. 1989) which held to the contrary as did the schizophrenic Idaho court in Northcutt.

CASE HIGHLIGHTS

Darla Land v. Jim Thalman
Civil Action No: 90-S-2291
United States District Court Colorado

On January 20, 1990, Darla Land was skiing at Beaver Creek, Colorado. Land was an intermediate skier.

Ms. Land was skiing the last pitch of 1876. She was wearing an outfit with a large fuchsia design. 1876 is an intermediate run, 197 feet wide, well groomed and generally covered with man-made snow. About midway down the last pitch of 1876, Land fell near the center of the run. While trying to clear fog from her glasses, Jim Thalman, sliding out of control and from above, collided into her.

Land was carried, by the force of the collision, another 150' downhill, injuring her left knee. Thalman's momentum carried him below Land and he lost both skis in the wreck.

Land sued Thalman. She alleged that Thalman violated the Colorado Ski Safety Statute which requires all skiers to ski in control and within the range of their ability. The primary duty to avoid a collision is on the uphill skier. §33-44-109(2) C.R.S. Land contended that Thalman was skiing beyond his ability and excessively fast.

Thalman had skied several runs that day. He found the conditions to be "hard packed with icy spots". While descending 1876, prior to the last pitch he had lost "his confidence" in the conditions.

Thalman contended the plaintiff had contributed to the accident by not moving to the side of the run after she had fallen. He also argued that Land had assumed a risk that she would be run over by remaining on the slope after her fall.

The Court ruled, as a matter of law, that Plaintiff did nothing to cause her injuries. The court refused to allow the assumption of the risk defense. A skier is entitled to assume other skiers will abide by their duty to ski in control. One never assumes the risk that another person will act negligently. Being hit by an out of control skier is not a risk inherent, or assumed in the sport.

The jury returned a \$162,250.00 verdict for Land.

Kidwell & Masciola v. Wakefield & Indianhead Ski Corporation
Western District, Northern Division, Michigan
Sixth Circuit Court of Appeals
On Petition to the United States Supreme Court, October 1991 Term

Our thanks to William McDonald, Esq. of Marquette, Michigan for advising SSN that this matter is pending. Here, two skiers were injured under identical circumstances. They each were in an amateur alpine race. The finish line was set between two lightly padded telephone poles. Both skiers struck a pole injuring themselves. The case was brought on the theory that in the exercise of reasonable care, either the poles were inadequately padded or the race course should have been set elsewhere.

The trial judge looked at the pictures of the race course and held that the poles were an "inherent", obvious and necessary part of the ski race. The skiers appealed arguing that the question of whether the risks presented by the poles was inherent was a question for the jury. This argument is identical to the decision of the Utah court in Clover.

The case may now be considered by the United States Supreme Court on the issue of whether the trial judge should have allowed a jury to make the decision as to whether the risks presented by the telephone poles were risks inherent to the sport. The Petition argues: "Are factual decisions required before the applicability of the Michigan Ski Area Safety Act can be determined? Yes! To come within the parameters of the Act's language, at a minimum the "danger" causing the injury must be obvious and the "danger" must be necessary. Deciding whether the "danger" fits these qualifications requires a decision on facts."

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Compilation of State Statutes Relating to the Inherent Risks of Skiing

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The following compilation of state statutes relating to the inherent risks of skiing was downloaded from WESTLAW on February 10, 1992, and is as current as WESTLAW is as of that date. Some statutes are an integral part of the statutes regulating tramways, and, where the context is necessary for better understanding, the full tramway and inherent risk statutes are set forth. Most states with tramways have statutes regulating the installation and operation of the tramways, but this compilation does not include tramway statutes unless they are an integral part of the inherent risk statute.

Some states have statutes which address only certain aspects of skiing, such as California, which merely prohibits a skier involved in an accident from leaving the scene of the accident. Some statutes authorize a regulatory body to promulgate regulations. Most of the regulations relate to tramways, but some regulations may affect the inherent risks of skiing. Some states have broad inherent risk statutes which relate to skiing and a host of other sports.

TABLE OF CONTENTS

ALASKA	2	NORTH CAROLINA	39
CALIFORNIA	2	NORTH DAKOTA	41
COLORADO	2	OHIO	43
CONNECTICUT	8	OREGON	46
IDAHO	10	PENNSYLVANIA	48
MAINE	12	RHODE ISLAND	48
MASSACHUSETTS	13	TENNESSEE	49
MICHIGAN	14	UTAH	51
MONTANA	18	VERMONT	52
NEVADA	23	WASHINGTON	55
NEW HAMPSHIRE	25	WEST VIRGINIA	57
NEW JERSEY	30	WISCONSIN	59
NEW MEXICO	33	WYOMING	60
NEW YORK	36		

ALASKA

ALASKA STATUTES

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Title 9. Code of Civil Procedure.
Chapter 65. Miscellaneous Provisions.

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.

(c) In this section

(1) "inherent risks of skiing" means the danger 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.

CALIFORNIA

WEST'S ANNOTATED CALIFORNIA CODES
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PENAL CODE

PART 1. OF CRIMES AND PUNISHMENTS
TITLE 15. MISCELLANEOUS CRIMES
MISCELLANEOUS CRIMES
CHAPTER 2. OF OTHER AND MISCELLANEOUS
OFFENSES

§ 653i. Leaving scene of ski accident; infraction; punishment

Any person who is involved in a skiing accident and who leaves the scene of the accident knowing or having reason to believe that any other person involved in the accident is in need of medical and other assistance, except to notify the proper authorities or to obtain assistance, shall be guilty of an infraction punishable by fine not exceeding one thousand dollars (\$1,000).

COLORADO

WEST'S COLORADO REVISED STATUTES
ANNOTATED
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TITLE 33. WILDLIFE AND PARKS AND OUTDOOR
RECREATION
RECREATIONAL AREAS AND SKI SAFETY
ARTICLE 44. SKI SAFETY AND LIABILITY

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.

§ 33-44-101. Short title

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

§ 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.

§ 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.

§ 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.

§ 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.

§ 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 each 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

Bill would limit liability for ski areas

BY DIRK MILLER

THE JUNEAU EMPIRE

Eaglecrest Ski Area is supporting a bill that limits the liability of ski areas for accidents and places more of the responsibility on skiers, but it is unclear if the city-owned ski run would benefit from the legislation.

The proposed law, operators say, would help limit insurance costs, which otherwise would be added to the price of lift tickets. It attempts to balance responsibility for the sport's inherent dangers between skiers and the ski areas.

The proposal is aimed at "single enterprises," businesses or groups that chiefly run ski areas. Eaglecrest, however, is owned and operated by the city-borough, which might disqualify it from the legislation's protective cover, said Michael Ford, a legislative attorney working on the bill.

Sen. Tim Kelly, R-Anchorage and sponsor of the bill, said the measure, which is modeled after a similar law in Colorado, was intended to apply to all ski areas in the state. See Skiing, back page

Skiing...

Continued from Page 1

state. It will be changed to include Eaglecrest, he said.

"The intention always was to include Eaglecrest and that's why they are supporting the bill," Kelly said today.

The bill is being considered by Kelly's Senate Labor and Commerce Committee. A hearing on the bill was held Thursday. A similar bill has also been introduced in the House.

Ski area operators said the sport carries an inherent risk. Everything from the weather to bumps, cliffs, ridges, trees, bushes, rocks and lift towers present a danger to the skier, they said.

The bill lists several risks that would be considered inherent dangers of skiing; if something on the list caused an accident, the ski area would likely not be considered negligent by the courts.

Kelly said the main reason behind the bill is to put a stop to nuisance suits filed over skiing accidents.

"If it's your lack of skill, you shouldn't be able to turn around and whine about how it was corn snow instead of powder and I should have been warned," he said.

The bill also defines the responsibilities and duties of ski areas and skiers. It requires a ski area to prepare an operational plan that meets with approval by the state Department of Public Safety, or the federal government if the ski area sits on federal land.

The ski operation also would have to provide a ski patrol that meets or exceeds the standards of the National Ski Patrol System.

"There's no way to pad, sign and protect everything and everybody in every conceivable incident," said Al Clough, former president of Eaglecrest Ski Area's board of directors and a city-borough assembly member.

Clough said the Douglas Island ski area costs the city-borough about \$50,000 in insurance yearly to

guard against liability disputes.

"It (the legislation) does not totally absolve ski areas nor should it from obvious negligent acts on their parts," he said at a hearing this week.

Also testifying at the hearing was Paul Swanson of Eaglecrest. "The skier accepts the risk of participating in a sport and exercising responsibility for risks they can control themselves," he said.

Not everyone agreed with that sentiment during hearings this week by the Senate Labor and Commerce Committee.

"I'm here having to defend the consumer and general public against an obvious move to circumvent the intent of the people of the state of Alaska, short-change the consumers and basically protect a personal interest," said Bruce Rizer, testifying from Anchorage.

Rizer said his son had died as the result of a skiing accident at Alyeska Resort in Anchorage over a year ago. Alyeska, which is owned by the Japanese firm Seibu, is a big proponent of the bill. A lawsuit over the accident is still pending.

"There is nothing in this for consumers and the skiing public of Alaska," Rizer said. "There is nothing in this except for a multi-national Japanese corporation."

The Alaska Academy of Trial Lawyers is also opposing the bill, said Debra Gravo, executive director of the academy.

Alaska's ski liability law was thrown for a loop in 1991 when the Alaska Supreme Court ruled in a Valdez case that a skier could sue a ski area claiming negligence on the part of the operator. Legal fees and insurance costs are now likely to rise, the operators say.

Eaglecrest has not faced such litigation yet, said Gary Mendivil, Eaglecrest business manager, but the possibility remains.

"The worst-case scenario is if the law wasn't changed and a lot of cases went to jury trial, those costs would have to be passed on," Mendivil said.

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SNOW SAFETY AND OPERATIONS PLAN

EAGLECREST SKI AREA

1992-1993

OBJECTIVES.....2

OPERATING STRUCTURE.....4

MANAGEMENT.....6

LIFTS.....9

— SKI PATROL.....12

BASE OPERATIONS.....18

WEATHER.....19

TRAIL CONDITIONS.....20

COMMUNICATIONS.....22

SKI SCHOOL.....24

BUS TRANSPORTATION.....24

FACILITIES.....25

CLAIMS AGAINST CBJ.....28

DESIGNATED REPRESENTATIVE TELEPHONE LIST.....29

PREVENTATIVE MAINTENANCE SCHEDULE.....30

NO — LIFT OPERATOR TRAINING.....32

DAILY LIFT LOGS.....39

PERSONNEL TRAINING PROGRAM.....45

— LIFT & MOUNTAIN PROCEDURES.....46

— AVALANCHE CONTROL.....47

? — GUIDELINES FOR EXPLOSIVES.....50

— AVALANCHE RESCUE PLAN.....55

SEADOGS.....61

— SWEEP PROCEDURE.....62

— CHAIRLIFT EVACUATION.....66

NIGHT LIGHTING FAILURE.....73

HAZARD MARKING.....77

CLOSED & OUT OF BOUNDARY AREAS.....79

DISCIPLINE OF RECKLESS SKIERS.....81

— FIRST AID.....82

— SNOW GROOMING PLAN.....87

NO — RADIO PROCEDURES.....88

VEHICLES PROCEDURES.....89

STREAM ORDINANCE.....92

FIRE EVACUATION PLAN.....93

CRISIS PLAN.....100

FIRE ALARM AUTODIALER.....102

SIGN OFF PAGE.....103

A L A S K A

Remember ... these are extrapolations for data that is several years old. Good luck with your analysis.

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TELECOPIER TRANSMITTAL SHEET

DELIVER TO: John Fink
465 3756

FROM: Wendy Wolf

Number of pages INCLUDING transmittal sheet 1

DATE: Jan 15, 1993

OPERATOR: _____

TIME: _____

IF TELECOPY DOES NOT TRANSMIT PROPERLY, PLEASE CALL (907) 465-2012.

Based on Oct 89 - May 90 Alaska Visitor Statistics Program
33,600 people visited Alyeska (we don't know if they skied ... other areas)
~ 3,000 " " Eaglecrest (didn't show up in list.)

41,600 visitors

The average expenditure by all visitors to Alaska during that period is \$466 (for all expenses in AK during trip - not travel to AK)

$$\therefore 41,600 \times 466 = \$19,385,600$$

In 1991-92 season (Oct-May) there was most likely an increase of about 5000 visitors to these areas.



$$\therefore 46,600 \times 466 =$$

$$\$21,715,600$$

American National Standard

*for Passenger Tramways –
Aerial Tramways and Lifts,
Surface Lifts and Tows –
Safety Requirements*

This material is provided
as a membership service of
**UNITED SKI INDUSTRIES
ASSOCIATION**

ANSI B77.1-1990

 **American National Standards Institute**
1430 Broadway
New York, New York
10018

Foreword

(This Foreword is not part of American National Standard B77.1-1990.)

This standard deals with passenger transportation systems that use cables or ropes in the system for power transmission. These systems include reversible aerial tramways, detachable and fixed grip aerial lifts, surface lifts, and tows.

This standard is a revision of American National Standard Safety Requirements for Aerial Passenger Tramways, ANSI B77.1-1982, and its supplements, ANSI B77.1a-1986 and B77.1b-1988. Section 1 provides the scope and general definitions for tramways covered in this standard. Section 7 addresses wire rope and strand requirements.

This standard had its inception in 1956. At that time, the industry dealing with recreational passenger transportation had reached such proportions that safeguards were required for the protection of the public and progress of the industry. At the request of the Eastern Ski Area Operators Association, one of the original sponsors of the project, a general conference was held in New York City. As a result of that conference, American National Standards Committee B77, composed of operators, users, authorities having jurisdiction, designers, and manufacturers of aerial tramways, was established to develop safety requirements. The first standard was approved by ANSI on June 8, 1960, and revisions were developed and approved in 1970, 1973, 1976, and 1982, when the format was changed to that used presently. This present revision brings the standard up to date with the latest developments in the field.

Because of the diverse nature of the industries that may use this standard, it is recommended that authorities having jurisdiction consider an effective date of one year from the approval date of the standard. The "effective date" of this standard is a criterion selected by the committee and not by the American National Standards Institute.

Suggestions for the improvement of this standard will be welcome. They should be sent to the United Ski Industries Association, 8377-B Greensboro Drive, McLean, VA 22102, Attn: ANSI B77 Committee Administrator.

This standard was approved for submittal to ANSI by Accredited Standards Committee on Aerial Passenger Tramways, B77. Committee approval of the standard does not necessarily imply that all the committee members voted for its approval or the approval of every requirement in the standard. At the time it approved this standard, the B77 Committee had the following members:

Sel Hannah, Chairman
Chris Stoddard, Committee Administrator

<i>Organization Represented</i>	<i>Name of Representative</i>
Aerial Engineering	James Ellis
Alpha Associates, Inc	Sam Bonasso
ASTM F-27 Committee	Rick Gregorio
Bridon American Corporation	David Sleightholm
California Ski Areas Association	Stan Hansen
Chestnut Mountain Ski Corporation	Joe Wachtel
Colorado Passenger Tramway Safety Board	Jonathan Carrick
CTEC, Inc	Jan Leonard
Doppelmayr Company, Inc	Werner Auer
Enduratek Corporation	Philip Berger
Ericksen Associates, Inc	Nils Ericksen
Fincor Corporation	Roger Paucek
Galena Ski Area	Douglas Clyde
Giant's Ridge Ski Area	Ron Greely
Hunter Mountain Ski Bowl	Scott Berwick

Organization Represented

Name of Representative

International Organization for Transportation by Rope—North American Continental Section	James Fletcher
Jenlynn International, Inc	James Bunch
Kendall Insurance, Inc (East)	Selden Hannah
Kendall Insurance, Inc (West)	LeRoy Schuitz
L.W.P. Services, Inc	Sam Geise
Lift Engineering and Manufacturing Company	Jan Kunczynski
Loon Mountain Recreation Corporation	Rick Kelley
Massachusetts Tramway Safety Board	Channing Murdock
National Ski Patrol	Bill Simonsen
Pacific Northwest Ski Areas Association	Mel Borgersen
Palm Springs Aerial Tramway	Robert Ficker
Park City Ski Area	Phil Jones
Paulsen Wire Rope Company	Mark Reeves
Pettit-Morrey Company	Maynard Russell
Plummer Enterprises	William Plummer
Poma of America	J. F. Mugnier
Professional Safety Services	Norman Sothan
Riblet Tramway Company	Douglas Sowder
Riblet Tramway Company and Mt. Spokane	Tony Sowder
Rocky Mountain Lift Association	Randall Woolwine
Sandia Peak Tram Company	George Boyden
Sierra Ski Ranch	Vernon Sprock
Ski Liberty Operating Corporation	Andrew Dearborn
State of California, Division of Occupational Safety	Roland Craven
Sun Valley Company	Tim Silva
USDA Forest Service (recreation)	John Anderson
USDA Forest Service (engineering)	Dick Kasel
United Ski Industries Association	Chris Stoddard
United States Ski Association	Donald Simpson
Vail Associates, Inc	David Larson
Von Roll Habegger of America, Inc	Sid Roslund
Von Roll Transport Systems, Inc	Paul Wyss
Wildcat Mountain Corporation	Stanley Judge
Winter Park Resor'	Gerald Grosword

Individual Members

Albert Currier
Charles Dwyer
Robert Heron

Contents

SECTION	PAGE
1. General Requirements	5
1.1 Scope	6
1.2 Purpose	6
1.3 Reference to Other Codes and Standards	7
1.4 Definitions	7
1.5 Quality Programs	9
2. Reversible Aerial Tramways	9
2.1 Design and Installation	10
2.2 Electrical Design and Installation	20
2.3 Operation and Maintenance	22
3. Detachable Grip Aerial Lifts	26
3.1 Design and Installation	26
3.2 Electrical Design and Installation	42
3.3 Operation and Maintenance	44
4. Fixed Grip Aerial Lifts	48
4.1 Design and Installation	48
4.2 Electrical Design and Installation	62
4.3 Operation and Maintenance	65
5. Surface Lifts	69
5.1 Design and Installation	69
5.2 Electrical Design and Installation	79
5.3 Operation and Maintenance	81
6. Tows	85
6.1 Design and Installation	85
6.2 Electrical Design and Installation	91
6.3 Operation and Maintenance	93
7. Wire Rope and Strand Requirements	96
7.1 Physical Properties	96
7.2 Testing	99
7.3 Connections	101
7.4 Operation and Maintenance	102
8. Revision of American National Standards Referred to in This Document	105
Appendixes	
Appendix A International System of Units (SI) Metric Conversion Factors ...	106
Appendix B Measuring the Diameter of Wire Rope	108
Figure B1 Measuring the Diameter of Wire Rope	108
Index	109

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(1922-1990)
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(1937-1992)

January 15, 1993

John Heiser
Director, Mountain Operations
Seibu Alaska, Inc., dba Alyeska Resort
PO Box 249
Girdwood AK 99587

VIA FACSIMILE
783-2814

Re: Alaska Ski Safety Act of 1993

Dear John:

I have reviewed Mike Ford's comments on the proposed Alaska Ski Safety Act of 1993, in particular his comment that he is not certain the draft legislation changes the result in *Hiibschman*. I have not reviewed the entire draft, not having had time to do so, but I have redrafted the first two sections in Section 2 of the bill.

The redraft borrows heavily from the New Jersey inherent risk statute. The redraft clearly and unambiguously sets forth that there is no liability for a ski injury arising either from an inherent risk of skiing, or a violation of the passenger or skier duties set forth in the act, **unless** the ski area operator violated its duties and that violation contributed to the injury. In that case, the usual rules of comparative negligence and allocation of fault would apply.

I recommend that the two redrafted sections be substituted in the present legislative proposal. As we have discussed, there is an outside chance that the Alaska Supreme Court would declare this unconstitutional, but that is a chance we must take. I see no other way to achieve the desired result and take care of any "equal protection of the laws" concerns.

Very truly yours,

DELANEY, WILES, HAYES,
REITMAN & BRUBAKER, INC.



Marc D. Bond

Enc.

Redraft of the first two sections in Section 2 of the Alaska Ski Safety Act of 1993:

Sec. 05.45.010. LIMITATION ON ACTIONS ARISING FROM SKIING. A skier assumes the risk of injury arising from an inherent danger and risk of skiing, and may not bring an action against a ski area operator for an injury resulting from an inherent danger and risk of skiing.

Sec. 05.45.020. CIVIL ACTIONS. (a) A person who violates a requirement of this chapter is negligent and civilly liable to the extent the violation causes injury.

(b) A ski area operator who violates a requirement of this chapter or a regulation adopted by the Department of Labor under AS 05.20.070 is negligent and civilly liable to the extent the violation causes injury.

(c) (1) Notwithstanding the provisions of AS 09.17.080, the assumption of risk set forth in AS 05.45.010 shall be a complete bar of suit and shall serve as a complete defense to a suit against a ski area operator for injuries where an assumed risk is found to be a contributory factor in the resulting injury, unless the ski area operator has violated a requirement of this chapter or a regulation adopted by the Department of Labor under AS 05.20.070.

(2) Notwithstanding the provisions of AS 09.17.080, a violation of the passenger or skier duties set forth in this chapter shall be a complete bar of suit and shall serve as a complete defense to a suit against a ski area operator where such violation is found to be a contributory factor in the resulting injury, unless the ski area operator has violated a requirement of this chapter or a regulation adopted by the Department of Labor under AS 05.20.070.

(3) If the ski area operator has violated a requirement of this chapter or a regulation adopted by the Department of Labor under AS 05.20.070, the provisions of AS 09.17.080 shall apply.

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 44(L&C)

#1

Page 5, line 5, after "hazard marking,":

Insert "missing persons procedures,"

#2

Page 5, line 11, after "Inc.":

Insert "This subsection does not apply to a ski area if the operator transports skiers using only a single tramway consisting of a rope tow, the rope tow does not transport skiers more than 500 vertical feet, and the ski area is operated by a nonprofit corporation or a municipality. In this subsection, "nonprofit corporation" means a corporation that qualifies for exemption from taxation under 26 U.S.C. 501(c)(3) or (4) (Internal Revenue Code)."

#3

Page 9, line 29:

Delete "snowmobile"

Insert "motor vehicle"

PAGE 9, LINE 10

#4

DELETE "(5)"

INSERT "(7)"

Page 10, after line 4:

Insert a new subsection to read:

#5

"(d) A ski area operator shall make available at reasonable fees, instruction and education regarding the inherent danger and risk of skiing and the duties imposed on skiers under this chapter. Notice of the times and places of the instruction and education required under this subsection shall be conspicuously posted at locations likely to be seen by skiers and printed on equipment rental agreements."

Page 10, line 9:

#6

After "Sec. 05.45.090.":

Insert "REQUIRED SKIER POLICY;"

After "PRIVILEGES.":

#7

Insert "(a) A ski area operator shall develop and maintain a written policy covering situations involving reckless skiers, including a definition of reckless skiing, procedures for approaching and warning skiers regarding reckless conduct, and procedures for taking action against reckless skiers, including revocation of ski privileges. A ski area operator shall designate ski patrol personnel responsible for implementing the ski area operator's policy regarding reckless skiers.

(b)"

#8

Page 10, line 11, after "privileges.":

Insert "(c)"

A M E N D M E N T

OFFERED IN THE SENATE

TO: CSSB 44(L&C)

Page 11, after line 29:

Insert a new section to read:

#9

"Sec. 05.45.110. RELEASE FROM LIABILITY PROHIBITED. A ski area operator may not require a skier to sign an agreement releasing the ski area operator from liability in exchange for the right to ski in the ski area. ~~An agreement that violates this section may not be enforced in a court.~~ A ski area operator who violates this section is subject to a civil penalty of \$10,000 in an action brought by the state."

Department of Natural Resources
Proposed Amendment to CSSB 44(L&C)

March 16, 1993

Page 5, line 7

#10

delete "public safety"
insert "natural resources"

Page 5, line 8

#11

delete "or the state" after United States

Page 5, line 10

#12

insert the following sentence to the end of subsection (a):

The review and approval required by this section is an exercise of the police power of the state and does not impose liability upon the state for injury or damage.

20.080

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Sec. 05.20.090. State not liable for injury or damage. Inspections, regulations, and orders of the department do not impose liability upon the state for injury or damage resulting from the operation of the facilities regulated by this chapter. An action of the department and its personnel is an exercise of the police power of the state. (§ 7 ch 109 SLA 1960)

Sec. 05.20.100. Authority of political subdivisions to regulate devices. This chapter does not impair the authority or responsibility of a political subdivision with regard to the local enforcement of licensing, safety, or police regulations authorized by local ordinance or state law if the department determines that the standards employed by the political subdivision are at least equal to those adopted by the department. The authority of a political subdivision for the licensing, safety, or police regulation of devices extends to a point five miles outside the territorial limits of the political subdivision if no other political subdivision of the state is exercising similar authority over the same devices. (§ 6 ch 109 SLA 1960)

Sec. 05.20.110. Exclusion of transportation devices under jurisdiction of other agencies from chapter. This chapter does not extend to the department or to political subdivisions authority to adopt regulations pertaining to transportation facilities or devices subject to the regulatory jurisdiction of other state or local agencies. (§ 9 ch 109 SLA 1960)

Sec. 05.20.120. Definitions. In this chapter, unless the context otherwise requires,

(1) "department" means the Department of Labor;

(2) "device" means a device that is designed and operated for the conveyance or movement of persons and that is used as a source of or aids in the promoting of entertainment, pleasure, play, relaxation or instruction, including but not limited to ski tows, roller coasters, merry-go-rounds, and Ferris wheels. (§§ 1, 2 ch 109 SLA 1960; am E.O. No. 49, § 3 (1981))

Chapter 25. Watercraft.

Article

1. Safety Requirements (§§ 05.25.010 — 05.25.020)
2. Accidents and Liability (§§ 05.25.030 — 05.25.040)
3. General Provisions (§§ 05.25.050 — 05.25.100)

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LAW OFFICES OF
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TO: Senator Robin Taylor DATE: 3-15-93
465-3922

Kenny Leaf Senate Judiciary Committee

FROM: Dennis Mestas

TOTAL NUMBER OF PAGES: 10 Including Cover Sheet

INSTRUCTIONS:

Enclosed are the proposed amendments
I promised you.

PLEASE CONTACT RENE' OR TERRY IF ALL PAGES NOT RECEIVED.

The following amendments were submitted
by Dennis Mestas.

PROPOSED AMENDMENTS TO CR44

Amendment **13**

Section 1(b)

The purpose of this act is to repeal and revise state law relating to skiing enacted by CH.80, SLA 1990. (Delete remainder of Section b as unnecessary and confusing as implies disapproval of Supreme Court reasoning and holdings in Hiibschman Inappropriate intrusion on the Supreme Court opinion in which has numerous legal rulings in it.

Delete Section 1(b)(4) (this section is completely unnecessary as the law already provides that if an injury is solely the result of the inherent risk of skiing then no comparative negligence or any other negligence would apply)

Amendment 14

Section 05.45.010(2) delete in its entirety. This section could create a completely different form of comparative negligence for ski areas. It is confusing and misleading. Further, it completely misstates the law of negligence as it has always been treated by the courts. Negligence is attributable only to a person or an organization. It is never attributable to a thing such as an inherent danger and risk. However, it is quite often the thing -- such as an unmarked cliff, an unmarked road cut or snow grooming equipment which kills you. The ski area's failure to warn or failure to make safe, may lead to one being killed or injured by the thing. If the inherent danger and risk is put into the formula for determining fault, this is mixing apples and oranges. Cliffs and drop-offs, the laws of gravity and physics cannot "contribute" merely by existing. This section could allow some measure of fault to be attributed to a cliff or piece of equipment. Attributing "contribution" to mother nature is not accepted in any case, in any court, or in any other law I have ever heard of. If a manufacturer manufactures a defective car, does the jury or judge parcel out a "contribution" to the car as opposed to the manufacturer who made it? If a person speeds on an icy road and causes an accident, does the judge or jury parcel out a "contribution" to the icy road? This is nonsense of course. This radical departure from the law of negligence should be stricken from the statute.

Amendment **15**

5.45.040 Section (a)

Regulations shall be established by the Department of Public Safety setting forth the required elements of operating plans and in no case shall a ski area have a plan that is less stringent than one that is already in place as of the date of the statute.

Amendment

16

Section 05.45.060(e)(4)

Mark hydrants, water pipes, roads, catwalks, terrain modifications, and all other man made structures or hazards on slopes and trails that are not really visible to skiers under conditions of ordinary visibility from a distance of at least 100 feet and adequately and appropriately cover man made structures that create obstructions with a shock absorbent material that will lessen injuries; any type of marker is sufficient, including wooden poles, flags or signs, if the marker is visible from a distance of at least 100 feet and if the marker itself does not constitute a serious hazard to skiers; in this paragraph, "man made structures and hazards" does not include natural variations in steepness or terrain but does include such hazards that are a result of man made slope design, snow making, grooming operations, roads and catwalks, and other man made terrain modifications and/or activity;

Amendment 17

5.45.060(e) (5)

Mark exposed forest growth, rocks, stumps, stream beds, trees or other natural hazards that are located on open slopes or trails and that are not readily visible to skiers under conditions of ordinary visibility. ("Groomed" should be changed to "open" Limiting this to groomed slopes would result in a very significant downgrading of marking responsibilities for marking from the present responsibility in the plan of Seibu and Eagle Crest, which presently is not so limited. Grooming changes from day to day and many runs that are heavily used are never groomed at all. The most hazardous areas are on the ungroomed runs at Alyeska. There is no rationale for not marking ungroomed runs. On some days even beginner areas are not groomed if new snow has fallen.

5.45.060(e) (6)

Delete this as unnecessary.

Amendment **18**

Section 05.45.060(g)

The signs described in (e)(7) of this section and lift tickets described in (f) of this section must contain the following warning:

Notice: Warning! Under Alaska Law, the risk of an injury to person or property resulting solely from any of the inherent dangers and risks of skiing rests with the skier. A skier may not recover from a ski area operator for an injury resulting solely 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 structures, or other skiers, variations in terrain and the failure of skiers to ski within their own ability. A ski area is responsible if its own negligence is a cause of an injury or death.

Amendment 19

Section 05.45.100(a)

Delete the last line of this section. Risk of collision must either be an inherent risk for both a skier and a ski area or not an inherent risk for either.

Amendment 20

Section 05.45.100(e)

A skier has a duty to heed all posted information and other warnings and to refrain from acting in a manner that may cause or contribute to the injury of the skier or others. Evidence that the signs required by AS 05.45.050 and 05.45.060 were present, visible and readable at the beginning of a given day creates a rebuttable presumption that all skiers using the ski area on that day have seen and understood the signs. (Victims and especially children should be allowed to rebut a presumption as a sign may not be either readable or understandable to some people including children. Further, the language or location of the sign may inadequately warn or describe a hazard or condition.)

Amendment 21

Section 545.200

Definition 3. Inherent danger and risk of skiing means a necessary condition that is an integral part of the sport of skiing and which condition may not be eliminated or mitigated. The term "inherent danger and risk of skiing" does not include the negligence of a ski area operator under A.S. 05.45.020(b), or acts or omissions of a ski area operator involving the use or operation of ski lifts. (The present definition is completely unworkable and confusing. It is inconsistent with other sections above. It lists numerous items as supposedly being an inherent danger of risk and skiing which are not necessary or integral parts of the sport of skiing. Certainly man made hazards created by slope design, snow making or grooming operations, roads and catwalks (and especially hidden or not readily visible areas) are not necessarily inherent dangers and risks of skiing. Further, the present section indicates the negligence of a ski area operator is not an inherent danger and risk of skiing under 05.45.020(b) which requires a ski area operator to comply with the rest of this chapter. This includes marking man made hazards such as catwalks that cannot be seen from at least 100 feet. Inevitable confusion occurs as under the present section a catwalk or road cut created by grooming operations even if not visible from 100 feet would be a "inherent danger and risk of skiing" but the failure to mark it would not be an inherent danger and risk of skiing. This is nonsense and needlessly confusing. The far more simple definition is more workable.

1.27.93

STATE NEWS

State gets \$3.3 million

Alaska has received \$3.3 million as its share of national forest revenue collected in fiscal year 1992, which ended Sept. 30. Most of the money went to communities within the timber-rich Tongass National Forests. Haines, Juneau, Ketchikan Gateway, Sitka, Yakutat and unorganized areas received \$3.2 million. Chugach National Forest earnings totaled \$72,622, with \$3,582 paid to Anchorage. Under a separate economic assistance package, four Alaska communities will receive \$218,000 in grants. The money will be used for a Cordova campsite project, a shore bird workshop, a Seward Sea Life Center, crafts outlet and shellfish hatchery, a Thorne Bay road project, and a Kake hatchery project.

Kenai tops affordability index

KENAI — A study by the Alaska Housing Finance Corp. calls the Kenai Peninsula the state's most affordable region for home buyers. Peninsula home prices, combined with relatively high income levels, place Kenai homes at the top of the "affordability index" created by the finance corporation. Kenai single-family homes have been becoming more affordable since 1987, said Mark Romick of AHFC. Kenai, the Mat-Su valleys and eastern Fairbanks have consistently scored well in terms of affordability, while Kodiak and Juneau homes have been getting more expensive, Romick said. The average single-family home price on the Peninsula is \$111,600, the study said.

Daily News wire reports

Bill would limit ski areas' liability

The Associated Press

JUNEAU — An Anchorage man whose son died in a skiing accident at Alyeska resort says legislation that would limit the liability of ski areas would do nothing for Alaska's skiers.

Supporters of the legislation say it would help limit insurance costs, which are added to the price of lift tickets, and that it would balance responsibility for the sport's dangers between skiers and the ski areas.

Sen. Tim Kelly, R-Anchorage and prime sponsor of the Senate Bill 44, said the measure is modeled after a similar law in Colorado and would apply to all ski areas in Alaska.

An identical measure, House Bill 41, is pending in the House.

At a hearing last week before the Senate Labor and Commerce Committee, Kelly said the bill would rewrite the state's ski-liability law to help stop nuisance lawsuits over skiing accidents.

Alaska's law was weakened by a 1991 Alaska Su-

preme Court ruling that made it easier for a skier to win damages for negligence from a ski area operator. Legal fees and insurance costs are likely to rise, the operators say.

The bill lists several risks that would be considered inherent dangers of skiing. If something on the list caused an accident, the ski area would likely not be considered negligent by the courts.

"If it's your lack of skill, you shouldn't be able to turn around and whine about how it was corn snow instead of powder and I should have been warned," Kelly said.

But Bruce Rizer, who testified against the bill last week, said the legislation would shortchange consumers.

Rizer's 11-year-old son, Bart, died of hypothermia in December 1991 after he skied off a groomed trail and into deep powder snow at Alyeska and could not get out. A lawsuit over the accident is pending.

Alyeska's owner, a Japa-

nese corporation called Seibu, is a major supporter of Kelly's bill.

"There is nothing in this for consumers and the skiing public of Alaska," Rizer told the committee. "There is nothing in this except for a multinational Japanese corporation."

The Alaska Academy of Trial Lawyers also opposes the bill.

The bill defines the responsibilities and duties of ski areas and skiers. It requires ski areas to prepare operational plans and provide ski patrols that meet or exceed the standards of the National Ski Patrol System.

"There's no way to pad, sign and protect everything and everybody in every conceivable incident," said Al Clough, a former board president of the Eaglecrest ski area in Juneau who supports the bill.

Clough said the city, which owns and operates Eaglecrest, pays about \$50,000 a year for liability insurance.

to charge him to recapture

1.27.93

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to charge him to recapture

drinking evidence and concluded that the trial court did not abuse its discretion in precluding discovery into and use of this evidence. On the other hand, the court should have granted summary judgment in favor of the plaintiff concerning the plaintiff's drinking on the day of

argues that these statutes do not contain any language demonstrating any legislative intent that liquor licensees should, under all circumstances, bear full responsibility for all damages resulting from a licensee's violation of

retained an attorney, initially for the purpose of defending him on the traffic ticket which had been issued to Pedersen as a result of the accident. His attorney subsequently associated

DELANEY, WILES, HAYES, REITMAN & BRUBAKER, INC.

ATTORNEYS AT LAW

1007 West Third Avenue, Suite 400

Anchorage, Alaska 99501

Telephone: (907) 279-3581

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FAX TRANSMISSION COVER SHEET

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TO: *Last Fink c/o Tim Kelley's office*

ATTENTION: *John Fink*

FAX NUMBER: *465-3756*

FROM: *Tim Leub*

DATE: *1-18-93*

MATTER: *Inherent Risk of Skiing*

NUMBER OF PAGES INCLUDING COVER SHEET: *10*

COMMENTS: *John Heiser asked me to fax these articles to you*

THE
FOLLOWING
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ARE
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PIPELINE SECURITY: Alaska gets high marks in GAO report, Business, B-4



NO. 1 EAST WINS

Thunderbirds rout 4th-rated Service

Sports, C-5

KKK ART AT UAA

Not all art can be politically correct

Lifestyles, D-1

FILE

Far

Anchorage Daily News

VOL. XLVI, NO. 344 62 PAGES

ANCHORAGE, ALASKA, TUESDAY, DECEMBER 10, 1991

Deep, deadly powder

11-year-old skier's death investigated

By CRAIG MEDNER
Daily News reporter

On a day when downhill skiers reveled in the first good snow of the year, 11-year-old Bart Rizer died a sad and tragic death on the slopes of the Alyeska Resort in Girdwood.

An adventuresome turn on Sunday afternoon led the young but experienced skier from a groomed trail into untracked powder from which he never escaped, authorities said.

Trapped in 4 1/2 feet of soft snow — snow as deep as Rizer was tall — the Bear Valley sixth-grader succumbed to hypothermia before rescuers could find him, according to Alaska State Troopers.

John Helser, director of mountain operations for Alyeska, said it appeared Rizer turned off the groomed trail near the top of a run called The Weir, skied over a ledge into deep powder, fell, popped out of his skis, tumbled headfirst into the snow and never got up.

"There were no broken bones," said Alyeska spokeswoman Laurie Hita. "No immediate physical injury."

Though only 85 feet from the heavily traveled main trail through the bowl, Rizer went unnoticed by other skiers and ski patrolers who swept the area as usual just before closing it as early winter darkness settled over the unlighted east side of the mountain at about 4 p.m.

An hour later, Rizer's parents, Bruce and Patricia Rizer, notified the ski patrol their son was missing. They

Please see Back Page, B1C1H1

SKIERS: Troopers say hypothermia killed Bear Valley sixth-grader at ski resort

Continued from Page A-1

had been looking for Bart since shortly after 3:45 p.m., said Hite.

That was about the time Bart's ski buddy showed up at the family's Girdwood condominium, Heiser said. The two boys had separated high on the mountain. Bart's friend wanted to stick to the groomed, intermediate trail. Bart was tempted by the challenge of the fresh powder.

"(He) was a good little skier," said family friend Linda Welford. "He had been skiing (Alyeska) for years and years."

Bart arranged with his buddy to meet farther down the mountain, and then turned off the groomed trail to explore the sort of untracked snow that experienced skiers love. When Bart

failed to show at the meeting point, his buddy decided the better skier must have passed by. The buddy headed down to the family condo expecting to meet Bart, Heiser said.

Instead, he found only the parents. With parental anger turning increasingly to worry, the Rizers waited about an hour for Bart's anticipated arrival, and then notified the ski patrol he was missing.

Ski patrolers headed back up the mountain to battle deep snow and deepening darkness until 9:30 p.m. when they discovered Bart unconscious.

A member of the patrol was checking out a track cutting off from the groomed trail into the powder between The Weir and Eagle Rock when he spotted Bart's body, Heiser said. It was in

an area regularly skied by advanced intermediates.

"Not much of him was visible," Heiser said. "It was amazing that we found him at all."

Ski patrolers began efforts to revive Bart while taking him down the mountain in a toboggan. He was then rushed to Providence Hospital in Anchorage where doctors tried to save him.

Bart was declared dead at 11:39 p.m. Troopers said it was hypothermia — the lowering of the body's temperature — that killed him.

It was a chilly 15 to 25 degrees on the mountain Sunday, but for good skiers like Bart the snow was the stuff of dreams.

"Off the trail, it ranged from about your waist to up to your chest," said Brook Pedregon, a "lanky" 14-year-

old, and older brother of one of Bart's friends. "It was incredible."

"One of my friends said he went over his head. Ski patrolers were digging people out of the deep snow with shovels when they fell and got stuck. We almost had to be dug out."

"The groomers (trail-grooming tractors) couldn't even get up there. We saw one groomer that was stuck. Me and my friend, we stayed like within 10 feet of the groomed trail; it was hard to get out of the stuff if you fell."

It was not, however, an unusually hazardous day, Heiser said.

"We had over 1,000 people skiing on the mountain," he said, "and it was pretty incident free."

Heiser said the ski patrol is still investigating the acci-

dent. It is unclear why the young skier never yelled for help with other skiers passing so close by on the groomed trail, and though troopers said Bart died of hypothermia, ski resort officials and the family have not ruled out other possibilities.

"At this point we don't know what the cause of death was, and there was no witness to the accident," Hite said. "He was basically skiing along, fell and came out of his skis, but somehow could not get up."

"Apparently he fell down in very deep powder snow and suffocated," said Welford.

Others speculated that Bart might have been overcome by panic while trying to free himself from the sun-

pery snow that closed in around fallen skiers like a miniature avalanche trying to trap them. Some said that snow was at times almost as frightening as it was fun.

"The snow was about up to my head. Someplaces it was deeper," said 16-year-old snowboarder Mark Palmisano. "I got stuck down by the bow. It was totally powder all over. I was down four feet, and I couldn't touch bottom, and the snow was coming in all around me. It was kind of scary. I had to like swim (to get out)."

"I could barely get out either. It was so deep. I've never seen it that deep before."

□ Daily News reporter George Frost contributed to this story.

BUSINESS

**Alaska Air cuts
post-holiday fares**
Page E1

**LIVING**

**Women vs.
the "Backlash"**
Page C1

SPORTS

**Dolphins rout
Bengals 37-13**
Page D1



The Anchorage Times

Locally owned since 1915; Alaska's best newspaper

TUESDAY, December 10, 1991

Volume 77 No. 344 25¢

Eleven-year-old skier's death called 'freak accident'

By DIANA ELLIOTT

DAILY WRITER

An 11-year-old boy who died after he ventured into 6 feet of fresh powder at Alyeska Resort was an experienced downhill skier who loved the sport, friends said Monday.

Bart Riser, a sixth-grader at Bear

Valley Elementary School, had been skiing since he was a preschooler and was adept on the advanced runs, said Linda Welford, a friend of the Riser family.

But Bart, who died late Sunday, apparently did not anticipate the conditions when he skied off the groomed path in the bowl area of the mountain

shortly after 3 p.m. and ended up in deep snow, Welford said.

Searchers found Bart buried in the snow on the Weir Run just below Eagle Rock about 7:30 p.m., said John Helser, director of mountain operations for the resort. The boy was buried under the snow, he said.

The accident happened just before

officials closed the run due to darkness, Helser said.

A fierce winter storm dumped 4 feet of new snow on the mountain in a four-day period, making ungroomed areas difficult to forge, said Laurie Hite, a spokeswoman for the resort.

"The area he was in was an open ground within boundaries," Hite said.

"As far as we can tell, he did nothing wrong. It was a freak accident."

Bart was skiing with a friend, who was not identified Sunday afternoon, when the two headed down the run below the Roundhouse lift terminal.

"His friend stayed on the groomed trail, while (Bart) went off into the powder," Hite said. See sidebar, back page.

A12 Tuesday, December 16, 1991, The Anchorage Times

Skier

Continued from page A1

der and they lost touch with each other," Hite said. "We don't know if the friend lost sight of him or if he skied to the bottom to wait."

When Bart did not show up at the bottom of the run, the friend notified Bart's family who were also skiing Sunday.

Just before 5 p.m., the ski patrol was told of the boy's disappearance, Hite said. About 30 volunteer and professional ski patrol workers combed the 140-acre area using a grid pattern with six searchers going down at a time, Heiser said.

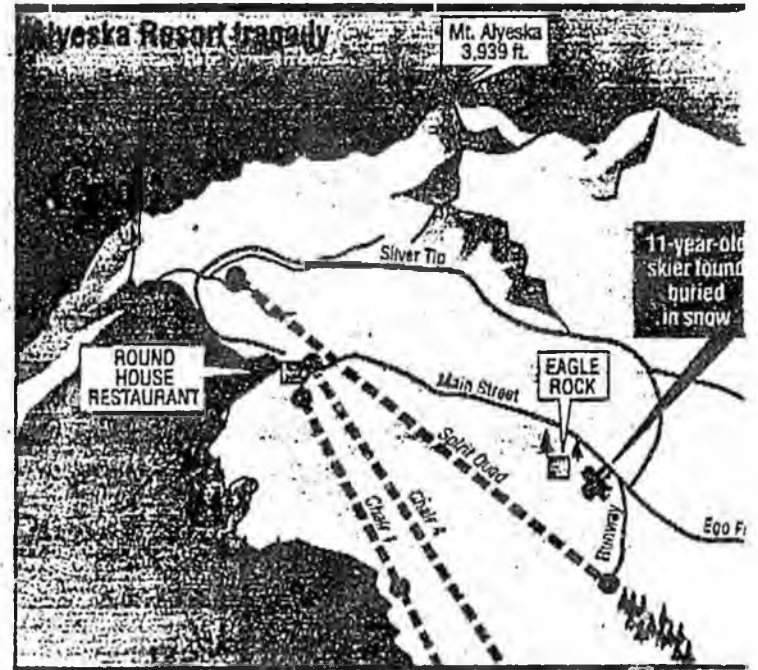
The searchers followed off-trail tracks hoping they would lead to Bart. Just before 7:30 p.m. — as troopers were preparing to join the effort — searchers located some tracks about 90 feet off the main trail.

Bart was found unconscious under the snow, Heiser said. The boy was placed in a sled with two ski patrol officials who had begun cardiopulmonary resuscitation. A skier then pulled the sled down the mountain to a waiting ambulance.

The boy was taken to Providence Hospital where he died at 11:30 p.m. Troopers said hypothermia is the suspected cause of death but an autopsy had not been performed by Monday afternoon.

Bart's death was the second in the history of Alyeska, which opened in 1959, officials said.

Weiford, who said she has known the Rizar family for 12 years, said Bart was



an excellent skier.

"The family has a condominium at the mountain and they ski every single weekend," she said.

Bart's younger sister, Megan, is also an avid skier, Weiford said.

Troopers are continuing to investigate the accident, but it never may be known

exactly what happened because no one witnessed it, said Alaska State Trooper Michael Opalka.

The upper mountain at Alyeska Resort was not open over the weekend because there was not adequate snow, Hite said. The resort is operating Wednesday through Sunday.

BART A. RIZER

Lifelong Anchorage resident Bart Alan Rizer, 11, a sixth-grader at Bear Valley Elementary School, was pronounced dead Dec. 8 at Providence Hospital as a result of a skiing accident at Alyeska Ski Resort in Girdwood.



A memorial gathering for friends and families will be held at 11 a.m. Saturday at Bear Valley Community School, 15001 Mountain Air Drive.

Bart was born Jan. 19, 1980, in Anchorage.

He made high grades throughout school and was in an accelerated learning program at Bear Valley Elementary. He was particularly skilled in mathematics, spelling and computers. He also excelled in wrestling and Nintendo.

He spent hours constructing intricate Lego projects. He and his family spent six months traveling in New Zealand, Australia, Fiji and Rarotonga. He spent summers fishing with his family in Prince William Sound.

His family said: "Bart had a gifted mind that was always in motion. He was always striving for excellence to do his best in anything he undertook in academics, sports and hobbies.

His classmates knew him as a 'cool dude' who was funny, enthusiastic and sensitive. His sense of humor and quick wit made him popular among adults and children of all ages."

Bart is survived by his parents, Bruce and Patti of Anchorage; his sister, Megan of Anchorage; his maternal grandfather, Joseph Sloan of Palm Desert, Calif.; his paternal grandmother, Helen of Mesa, Ariz.; his aunts, Sally Corey of California, Donna Gallagher of California and Deborah Rizer of Washington; and his uncle, A.J. Rizer of Washington.

In lieu of flowers, the family suggests that memorial donations be sent to the Bart Rizer Memorial Fund, c/o of Bear Valley Elementary School, 15001 Mountain Air Drive, Anchorage, 99516. Bart's parents will use the funds to construct a special reading area in the school library.

METRO

ANCHORAGE DAILY NEWS

SECTION B



Patti and Bruce Rizer, with daughter, Megan, 10, are asking for better safety provisions at Alyeska Ski Resort.



Bart Rizer died in deep snow.

Grief drives parents

Son's death prompts call for safety reforms at ski resort

By SHEILA TOOMEY
Daily News reporter

Life was tough enough when Patti and Bruce Rizer thought an act of God killed their son in a skiing accident three months ago.

But now they believe 12-year-old Bart could have been saved, and now anger drives their anguish.

Bart Rizer died Dec. 8 after being lost on the mountain at Alyeska Ski Resort for three hours. He was found head first in deep snow along one of several trails down the main bowl of the mountain on the first day of the skiing season. He had been skiing with a partner, but veered off on his own shortly before he reached the spot where his body was found. His death certificate says he died of cardiopulmonary arrest cause by severe hypothermia.

"I feel that he could have been saved," Patti said. "Every day we say, 'Bart should be with us today.'"

Are they right? Is it even possible to know, and how important is it since nothing can bring Bart back? These are questions the Rizers are

grappling with as they emerge from near-paralyzing early grief.

Above all, Patti and Bruce wonder what they should do, because they are convinced they have to do something.

"I can't do nothing," Patti Rizer said. "What happens if I pick up a paper two years from now and another kid died?"

This is not a story about the facts of Bart's death, nor an attempt to assess right or wrong. This is a story about a moment in time when forces that seem to have a life of their own are pulling people toward a lawsuit that probably doesn't have to happen. This is a story about feelings and fears and failure to communicate.



Stripped bare, here are the conflicting views of what happened that dreadful December day:

Please see Page B-2, TALE OF THE CITY

penses questioned

TALE OF THE CITY: Parents want ski safety

Continued from Page B-1

According to John Heiser, director of mountain operations for Alyeska, and other friends of the resort who called the Daily News at the resort's request, the snowfall was heavy but not unusual on Dec. 8 and a sign at the lift warned of "early season conditions." Skiing is inherently dangerous and cannot be made safe. Parents are responsible for assessing whether children can handle conditions. No one should ski alone, even for a little while. A heroic search was mounted over several hundred acres, in the dark, for a child largely buried in the snow. Heiser said the search should be considered a success because it took three hours to find Bart when it could have taken days. Everyone did everything possible. What happened was a rare and tragic accident.

According to the Rizers, the snow was dangerously deep and powdery and Alyeska employees knew this. Alyeska yielded to pressure to open the slopes when they shouldn't have. Signs should have been posted warning children not to ski. Bart was very safety conscious, according to his 10-year-old sister Megan, and would have heeded a warning. Basic rescue materials, such as a map of the mountain, were not available. No one seemed to be in charge of the search. It was two hours before searchers agreed to take Bart's buddy to the spot where they were last together. Bart died of hypothermia, so time was critical.

Before their son's death, the Rizers so loved Alyeska and the winter ski life that they wanted their ashes scattered over the mountain when they died. Now they are bitter. For nearly two months, no one from the resort contacted them, Patti said. No one sent a letter of condolence or offered to brief them. "We were craving information," she said. When they started asking questions, they got conflicting information and the resort told employees not to talk to them. When a letter finally arrived, it referred to Bart's death as "the incident involving your son," a phrase that still drives Patti into a fury.

In February, with active support from the resort, Sen. Jay Kerttula introduced a bill in the legislature that, among other changes, adds the word "death" to the list of damages for which ski resorts are not legally liable. Heiser said the bill only clarifies an existing "inherent dangers of skiing" law and was prepared in response to a 1991 Supreme Court decision involving a Valdez accident.

Again, the same facts but



"I can't do nothing. What happens if I pick up a paper two years from now and another kid died?"

— Patti Rizer

they required counseling, he said. "Our concern here, of course, is for the parents. We've gone to great lengths to meet with them and try to have them meet with individuals involved with the rescue."

Bruce and Patti say that's not how it feels to them. They don't want to file a lawsuit, Patti said. They haven't even consulted a lawyer. They just want Alyeska to admit they should have found Bart sooner and promise, in a binding way, to improve.

Unfortunately, court action is beginning to look like the only way to accomplish this, Bruce Rizer said.

Alyeska certainly doesn't want to get sued, but its safety practices are excellent and its safety record very good, Heiser said. He acknowledged no errors in the search. Resort employees have met with the Rizers without lawyers, as a gesture of good will, and are listening to the family's suggestions. "They've had good ones," Heiser said.

Rick Friedman is an experienced Anchorage trial lawyer who has nothing to do with either side. He called the situation "a familiar pattern" when a child dies.

"The problem is, of course, there's so much more going on than the legal system can deal with. ... It's not about money. The parents don't want money. Money trivializes them."

"The parents want to have something constructive come out of this horrible event," Friedman said. "They want to have it have some meaning. ... The parents have anger because they feel they've been mistreated."

"On the other side you have this large institution, they are defensive ... They're afraid to do anything. ... It's tailor made for somebody sitting them both down and saying, 'Let's take this bad situation and make something good come from it.'"

The obvious common ground is safety. Friedman suggested both sides agree

STATE NEWS

Kilbuck caribou take low

BETHEL — Cold, windy weather that saw wind-chills push temperatures as low as 75 degrees below zero kept hunters out of the field during the spring Kilbuck caribou hunt, the U.S. Fish and Wildlife Service said. That resulted in a harvest of just 20 animals, officials said. The hunt was open to residents of 18 villages in the Kuskokwim and Togiak regions. The U.S. Fish and Wildlife Service issued 72 permits — four permits to each village. Nineteen hunters from the Kuskokwim region

and one from the Togiak area hunted caribou, said agency spokesman. Reason for the low activity was caribou from the Mulchatna herd, he said. Animals from that herd in the Togiak area in the past year were able to harvest 100 percent of their herd, reducing the need to hunt

SCHOOL: Roof caves in; students

Continued from Page B-1

district maintenance chief, said the falling beams set off the sprinkler system, which alerted the fire department.

The room, measuring about 80-by-80 feet, was a wreck. The roof bowed sharply inward and the two-foot-thick laminated beams

were split and broken down the middle, their varnished shreds splayed out like fingers. The room creaked eerily Sunday as inspectors watched from the safety of the doorway and tried to figure out what caused the collapse.

The most obvious suspect — a heavy accumulation of

snow — did not cause, Conynow snow load had three times that said, and was on the safe side rated minimum 40 pounds per

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PHONE: Valley board's travel expe

Continued from Page B-1

out-of-pocket expenses, MTA board members on business trips also are paid \$250 a day to compensate for lost wages.

Both Connell and Johnson, of Eagle River, are running for re-election.

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There's a Line Betw Ordinary and Gre Television

at the end of the season. **JAN 18 '93 13:17 DELANEY WILES**
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Again, the same facts look different to the Rizers. To them it seems like Alyeska "rushed to get complete immunity" from responsibility instead of acknowledging mistakes and improving safety.

"What were they doing for two months?" Patti asked. "Working on this bill instead of talking to me? What's a grieving parent to think?"

Heiser said he, too, is a parent. The people at Alyeska have great sympathy for the Rizers' loss. Several searchers were so distraught over Bart's death

nothing. What happens if I pick up a paper two years from now and another kid died?

— Patti Rizer

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"On the other side you have this large institution, they are defensive ... They're afraid to do anything. ... It's tailor made for somebody sitting them both down and saying, 'Let's take this bad situation and make something good come from it.'"

The obvious common ground is safety, Friedman suggested. Both sides care about it. "What they need is either a scholarship or a safety program or something that makes the world a better place, because (Bart's) not going to have a chance to make the world a better place."

SCHOOL: Roof caves in; student

Continued from Page B-1

district maintenance chief, said a falling beams set off the sprinkler system, which alerted the fire department.

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The newspaper so wanted to see executive expense audited financials, operating and reports of aries.

There's a Line Between Ordinary and Gre Television

January 18, 1993

TO: Josh Fink
FR: Patti Rizer 
RE: Newspaper Articles

Here are the two newspaper articles about Bart's death. I have also included the FIRST communication we received from Seibu Corporation after Bart's death. We received it two months to the day after Bart's death. The letter's tone is indicative of how we have been treated by this corporation.

Also enclosed is an article published in March 1992. This is the first time we were able to discuss Bart's death in public. We were approached by Sheila Toomey, whom we did not know before the interview. When she told us she and much of the Anchorage community thought Bart jumped off of Eagle Rock or was out of bounds, we decided to answer some questions personally.

Josh, this is not a vendetta or revenge. We are trying to make something positive come from our tragedy. So far three positive events have occurred:

1. We were able to donate Bart's corneas and now two people have the gift of sight—a baby girl in Michigan named Katelyn (letter also faxed), and a man in Seattle. (Because Bart died of hypothermia, the rest of his organs could not be donated.)
2. A special library annex in Bart's name at Bear Valley Elementary School. (I've faxed information about the library.)
3. A wrestling tournament in Bart's name for youths in Anchorage elementary schools. (See faxed flyer.)

We are grateful for your help and interest. Our concern is for the safety of Alaskans.



PIPELINE SECURITY: Alyeska gets high marks in GAO report; Busine

NO. 1 EAST WINS

Thunderbirds rout 4th-rated Service

Sports, C-1

KKK ART AT UAA

Not all art can be politically correct

Lifestyles, D-1

FILM TAB

'Rapture' at moral d

Impulse, F-1

Anchorage Daily News

VOL. XLVI, NO. 344 62 PAGES

ANCHORAGE, ALASKA, TUESDAY, DECEMBER 10, 1991

Deep, deadly powder

11-year-old skier's death investigated

By CRAIG MEDRED
Daily News reporter

On a day when downhill skiers reveled in the first good snow of the year, 11-year-old Bart Rizer died a sad and tragic death on the slopes of the Alyeska Resort in Girdwood.

An adventuresome turn on Sunday afternoon led the young but experienced skier from a groomed trail into untracked powder from which he never escaped, authorities said.

Trapped in 4 1/2 feet of soft snow as deep as Rizer was tall -- the Bear Valley sixth-grader succumbed to hypothermia before rescuers could find him, according to Alaska State Troopers.

John Helzer, director of mountain operations for Alyeska, said it appeared Rizer turned off the groomed trail near the top of a run called The Weir, skied over a ledge into deep powder, fell, popped out of his skis, tumbled headfirst into the snow and never got up.

"There were no broken bones," said Alyeska spokeswoman Laurie Hite. "No immediate physical injury."

Though only 85 feet from the heavily traveled main trail through the bowl, Rizer went unnoticed by other skiers and ski patrolers who swept the area as usual just before closing it as early winter darkness settled over the unlighted east side of the mountain at about 4 p.m.

An hour later, Rizer's parents, Bruce and Patricia Rizer, notified the state troopers.



Sounds of the season

Kvin Carlenson, 10, and the St. Elizabeth's choir perform at the...

Air wa Alask with \$

By BRUCE MEDRED
Daily News reporter

Alaska Airlines cut out its discount Monday and fares in half around Alaska counter on Air's recent ticket deals.

New half-fares offered by Air most common the airline. Tickets purchased on 15 and are \$ between Jan. said Greg W spokesman.

Under the round-trip charge to \$21 days in advance in the middle drops to \$20 similar ticket days in advance \$240.

"Mark Air learn very quick

Berg of M

By HAL BERG
Daily News reporter

Mark Air Berg tried to get to Alaska weeks before major expansion fare war carriers the from Seattle Alaska Airlines vice officer

Hite said

News 12/10/91

SKIERS: Troopers say hypothermia killed Bear Valley sixth-grader at ski resort

Continued from Page A-1

had been looking for Bart since shortly after 3:45 p.m., said Hlitz.

That was about the time Bart's ski buddy showed up at the family's Girdwood condominium, Heiser said. The two boys had separated high on the mountain. Bart's friend wanted to stick to the groomed, intermediate trail. Bart was tempted to the challenge of the fresh powder.

"(He) was a good little skier," said family friend Linda Wellford. "He had been skiing (Alyeska) for years and years."

Bart arranged with his buddy to meet farther down the mountain, and then turned off the groomed trail to explore the sort of untracked snow that experienced skiers love. When Bart

failed to show at the meeting point, his buddy decided the better skier must have passed by. The buddy headed down to the family condo expecting to meet Bart, Heiser said.

Instead, he found only the parents. With parental anger turning increasingly to worry, the Rizers waited about an hour for Bart's anticipated arrival, and then notified the ski patrol he was missing.

Ski patrollers hended back up the mountain to battle deep snow and deepening darkness until 7:30 p.m. when they discovered Bart unconscious.

A member of the patrol was checking out a track cutting off from the groomed trail into the powder between The Weir and Eagle Rock when he spotted Bart's body, Heiser said. It was in

an area regularly skied by advanced intermediates.

"Not much of him was visible," Heiser said. "It was amazing that we found him at all."

Ski patrollers began efforts to revive Bart while taking him down the mountain in a toboggan. He was then rushed to Providence Hospital in Anchorage where doctors tried to save him.

Bart was declared dead at 11:39 p.m. Troopers said it was hypothermia — the lowering of the body's temperature — that killed him.

It was a chilly 15 to 25 degrees on the mountain Sunday, but for good skiers like Bart the snow was the stuff of dreams.

"Off the trail, it roned from about your waist to up to your chest," said Brook Predeger, a lanky 14-year-

old, and older brother of one of Bart's friends. "It was incredible."

"One of my friends said he went over his head. Ski patrollers were digging people out of the deep snow with shovels when they fell and got stuck. We almost had to be dug out."

"The groomers (trail-grooming tractors) couldn't even get up there. We saw one groomer that was stuck. Me and my friend, we stayed like within 10 feet of the groomed trail; it was hard to get out of the stuff if you fell."

It was not, however, an unusually hazardous day, Heiser said.

"We had over 1,000 people skiing on the mountain," he said, "and it was pretty incident free."

Heiser said the ski patrol is still investigating the accident.

It is unclear why the young skier never yelled for help with other skiers passing so close by on the groomed trail, and though troopers said Bart died of hypothermia, ski resort officials and the family have not ruled out other possibilities.

"At this point we don't know what the cause of death was, and there was no witness to the accident," Hlitz said. "He was basically skiing along, fell and came out of his skis, but somehow could not get up."

"Apparently he fell down in very deep powder snow and suffocated," said Wellford.

Others speculated that Bart might have been overcome by panic while trying to free himself from the deep

powder snow that closed in around fallen skiers like a miniature avalanche trying to trap them. Some said that snow was at times almost as frightening as it was fun.

"The snow was about up to my head. Sometimes it was deeper," said 16-year-old snowboarder Mark Palmisano. "I got stuck down by the bow. It was totally powder all over. I was down four feet, and I couldn't touch bottom, and the snow was coming in all around me. It was kind of scary. I had to like swim (to get out)

"I could barely get out either. It was so deep. I've never seen it that deep before."

□ Daily News reporter George Frost contributed to this story.

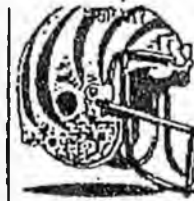
Alaska Air cuts
post-holiday fares

Page E1



Women vs.
the "Backlash"

Page C1



Dolphins rout
Bengals 37-13

Page D1



The Anchorage Times

Published since 1915, Alaska's best newspaper

TUESDAY, December 10, 1991

Volume 77 No. 368 2

Eleven-year-old skier's death called 'freak accident'

DIANA ELLIOTT

ES WRITER

An 11-year-old boy who died after he tumbled into 5 feet of fresh powder at Eskra Resort was an experienced downhill skier who loved the sport, friends said Monday.

Bart Rizer, a sixth-grader at Bear

Valley Elementary School, had been skiing since he was a preschooler and was adept on the advanced runs, said Linda Weiford, a friend of the Rizer family.

But Bart, who died late Sunday, apparently did not anticipate the conditions when he skied off the groomed path in the bowl area of the mountain

shortly after 3 p.m. and ended up in deep snow, Weiford said.

Searchers found Bart buried in the snow on the Weir Run just below Eagle Rock about 7:30 p.m., said John Helser, director of mountain operations for the resort. The boy was buried under the snow, he said.

The accident happened just before

officials closed the run due to darkness, Helser said.

A fierce winter storm dumped 4 feet of new snow on the mountain in a four-day period, making ungroomed areas difficult to forge, said Laurie Hite, a spokeswoman for the resort.

"The area he was in was on open ground within boundaries," Hite said.

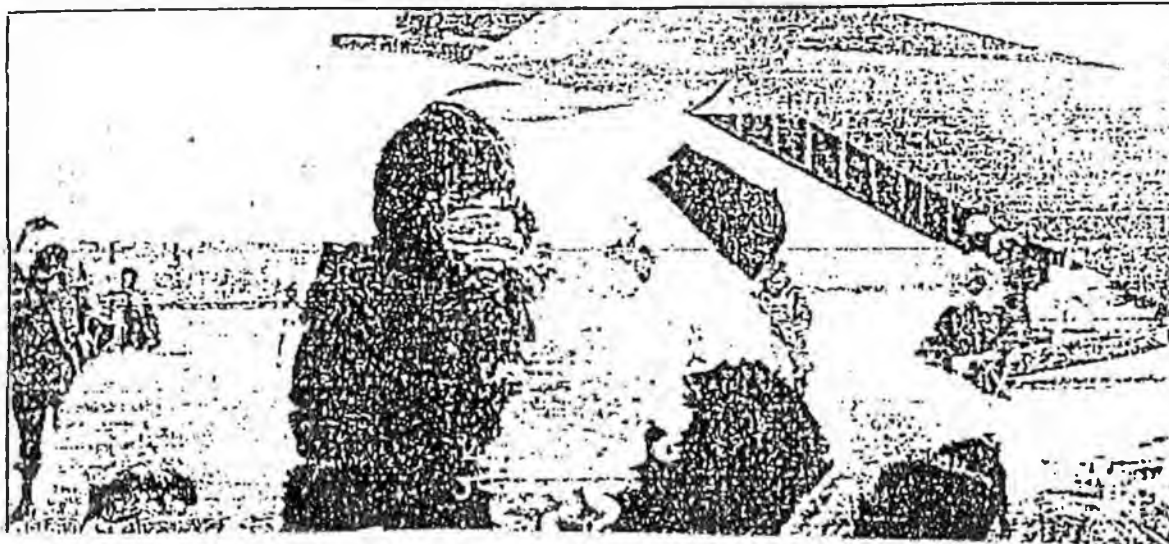
"As far as we can tell, he did nothing wrong. It was a freak accident."

Bart was skiing with a friend, who was not identified Sunday afternoon when the two headed down the run below the Roundhouse lift terminus.

"His friend stayed on the groomed trail, while (Bart) went off into the powder," Hite said. See Skier, back page.

BRUCE/PAT H RYNER

CHILDREN SNUGGLE UP TO SANTA CLAUS IN ARCTIC VILLAGE



Gorbachev battles to save union

By DEBORAH SEWARD

ASSOCIATED PRESS

MOSCOW — Mikhail Gorbachev on Monday challenged Boris Yeltsin's declaration that the Soviet Union was dead, branding a new Slavic commonwealth "illegal and dangerous." He urged the national Parliament to decide the country's fu-

Gorbachev's comment came several hours after he met with Yeltsin to discuss the "commonwealth of independent states." Yeltsin said Gorbachev might have a role in the new grouping. But Gorbachev, whose power has been evaporating since the failed August coup by Communist Party hard-liners, was m-

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84

Skier

Continued from page A1

der and they lost touch with each other," Hite said. "We don't know if the friend lost sight of him or if he skied to the bottom to wait."

When Bart did not show up at the bottom of the run, the friend notified Bart's family who were also skiing Sunday.

Just before 5 p.m., the ski patrol was told of the boy's disappearance; Hite said. About 30 volunteer and professional ski patrol workers combed the 140-acre area using a grid pattern with six searchers going down at a time, Heiser said.

The searchers followed off-trail tracks hoping they would lead to Bart. Just before 7:30 p.m. — as troopers were preparing to join the effort — searchers located some tracks about 90 feet off the main trail.

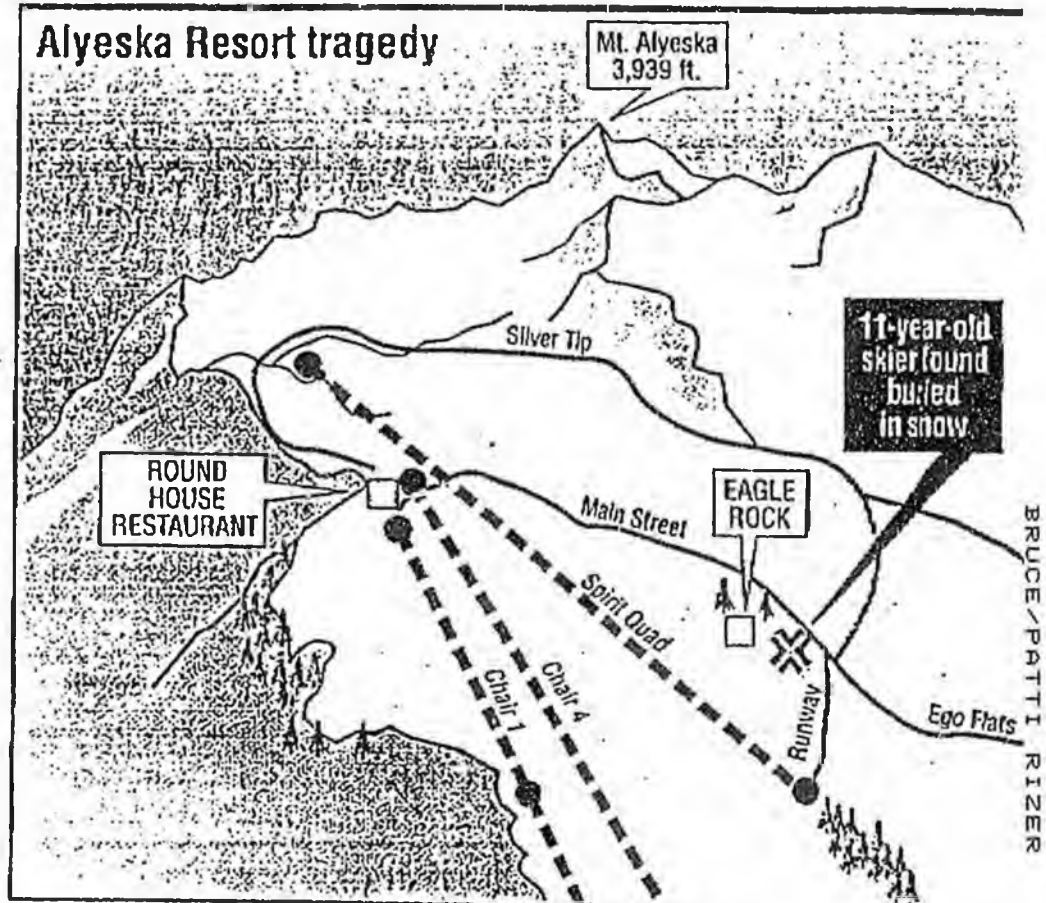
Bart was found unconscious under the snow, Heiser said. The boy was placed in a sled with two ski patrol officials who had begun cardiopulmonary resuscitation. A skier then pulled the sled down the mountain to a waiting ambulance.

The boy was taken to Providence Hospital where he died at 11:39 p.m. Troopers said hypothermia is the suspected cause of death but an autopsy had not been performed by Monday afternoon.

Bart's death was the second in the history of Alyeska, which opened in 1959, officials said.

Welford, who said she has known the Rizer family for 12 years, said Bart was

Alyeska Resort tragedy



11-year-old skier found buried in snow

BRUCE/PATTI RIZER

Times Staff/DEBRA DUBAG

an excellent skier.

"The family has a condominium at the mountain and they ski every single weekend," she said.

Bart's younger sister, Megan, is also an avid skier, Welford said.

Troopers are continuing to investigate the accident, but it never may be known

exactly what happened because no one witnessed it, said Alaska State Trooper Michael Opalka.

The upper mountain at Alyeska Resort was not open over the weekend because there was not adequate snow, Hite said. The resort is operating Wednesday through Sunday.

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UX (907) 753-2814

We have waited, perhaps too long, to express our gratitude to you for your decision to have a family member become a donor. Our daughter, Katelyn, was born with scarred cornea tissue covering both eyes and was unable to see at all out of one eye. She was three months old on December 14th when she received her corneal transplant. This was her seventh surgery up to this point as she also suffers from glaucoma. Being in a hospital setting as much as we are, we realize that we have much to be thankful for, particularly the kindness of strangers. There are few feelings in life that one experiences in life that cannot be reduced to words. This is one such experience for us. We are overwhelmed with feelings of optimism for our daughter and feelings of despair for the circumstances that made this procedure possible for her. That is one of the reasons this letter is so difficult to write. What you have given my daughter is a gift that no amount of money could buy - her sight. This gift was truly one of the greatest expressions of unselfish love that we have witnessed. We will treasure your gift and respect the courage it took to make the decision to donate when faced with such a personal tragedy. Please know that your child and family has been, and will continue to be, in our daily thoughts and prayers. God bless you.

Katelyn
and family

**SERVICE COMMUNITY SCHOOL
PRESENTS**

**THE BART RIZER MEMORIAL WRESTLING
CLINIC AND TOURNAMENT**

**Participants: Any students in grades
kindergarten through sixth**

Dates: January 16, 23, 30 (Saturdays)

Time: 10:00 to 12:00

Place: Service High Small Gym

Cost: \$15.00

Instructors: Byron Wilson, head wrestling coach for Service and Alex Alexandrou, Herm Jones, Mark Stiller, Jeff Dinwiddie, Ken Masneri, and Brian Peterson, assistant coaches for Service and Norm Masneri, head wrestling coach for Hanshew Junior High and The Service High Varsity Wrestlers

Basic fundamentals of wrestling will be stressed along with sportsmanship and conditioning and lots of fun!

This clinic and tournament is dedicated to Bart Rizer, an avid wrestling fan and participant. Part of the funds will be donated to the Bart Rizer Memorial Library Fund at Bear Valley School. There will be trophies awarded to the school with the most participants and the school that scores the most points. All wrestlers will receive a certificate and an award.

METRO

ANCHORAGE DAILY NEWS

SECTION B



Patti and Bruce Rizer, with daughter, Megan, 10, are asking for better safety provisions at Alyeska Ski Resort.

Grief drives parents

Son's death prompts call for safety reforms at ski resort

By SHEILA TOOMEY
Daily News reporter

Life was tough enough when Patti and Bruce Rizer thought an act of God killed their son in a skiing accident three months ago.

But now, they believe 12-year-old Bart could have been saved, and now anger drives their anguish.

Bart Rizer died Dec. 8 after being lost on the mountain at Alyeska Ski Resort for three hours. He was found head first in deep snow along one of several trails down the main bowl of the mountain on the first day of the skiing season. He had been skiing with a partner, but veered off on his own shortly before he reached the spot where his body was found. His death certificate says he died of cardiopulmonary arrest cause by severe hypothermia.

"I feel that he could have been saved," Patti said. "Every day we say, 'Bart should be with us today.'"

Are they right? Is it even possible to know, and how important is it since nothing can bring Bart back? These are questions the Rizers are

grappling with as they emerge from near-paralyzing early grief.

Above all, Patti and Bruce wonder what they should do, because they are convinced they have to do something.

"I can't do nothing," Patti Rizer said. "What happens if I pick up a paper two years from now and another kid died?"

This is not a story about the facts of Bart's death, nor an attempt to assess right or wrong. This is a story about a moment in time when forces that seem to have a life of their own are pulling people toward a lawsuit that probably doesn't have to happen. This is a story about feelings and fears and failure to communicate.

Stripped bare, here are the conflicting views of what happened that dreadful December day:



Please see Page B-2, TALE OF THE CITY



Rizer died in deep snow.

B2 Anchorage Daily News Monday, March 16, 1992

TALE OF THE CITY: Parents want ski safety

Continued from Page B-1

According to John Heiser, director of mountain operations for Alyeska, and other friends of the resort who called the Daily News at the resort's request, the snowfall was heavy but not unusual on Dec. 8 and a sign at the lift warned of "early season conditions." Skiing is inherently dangerous and cannot be made safe. Parents are responsible for assessing whether children can handle conditions. No one should ski alone, even for a little while. A heroic search was mounted over several hundred acres, in the dark, for a child largely buried in the snow. Heiser said the search should be considered a success because it took three hours to find Bart when it could have taken days. Everyone did everything possible. What happened was a rare and tragic accident.

According to the Rizers, the snow was dangerously deep and powdery and Alyeska employees knew this. Alyeska yielded to pressure to open the slopes when they shouldn't have. Signs should have been posted warning children not to ski. Bart was very safety conscious, according to his 10-year-old sister Megan, and would have heeded a warning. Basic rescue materials, such as a map of the mountain, were not available. No one seemed to be in charge or the search. It was two hours before searchers agreed to take Bart's buddy to the spot where they were last together. Bart died of hypothermia, so time was critical.

Before their son's death, the Rizers so loved Alyeska and the winter ski life that they wanted their ashes scattered over the mountain when they died. Now they are bitter. For nearly two months no one from the

When they started asking questions, they got conflicting information and the resort told employees not to talk to them. When a letter finally arrived, it referred to Bart's death as "the incident involving your son," a phrase that still drives Patti into a fury.

In February, with active support from the resort, Sen. Jay Kerttula introduced a bill in the legislature that, among other changes, adds the word "death" to the list of damages for which ski resorts are not legally liable. Heiser said the bill only clarifies an existing "inherent dangers of skiing" law and was prepared in response to a 1991 Supreme Court decision involving a Valdez accident.

Again, the same facts look different to the Rizers. To them it seems like Alyeska "rushed to get complete immunity" from responsibility instead of acknowledging mistakes and improving safety.

"What were they doing for two months?" Patti asked. "Working on this bill instead of talking to me? What's a grieving parent to think?"

Heiser said he, too, is a parent. The people at Alyeska have great sympathy for the Rizers' loss. Several searchers were so distraught over Bart's death



I can't do nothing. What happens if I pick

they required counseling, he said. "Our concern here, of course, is for the parents. We've gone to great lengths to meet with them and try to have them meet with individuals involved with the rescue.

Bruce and Patti say that's not how it feels to them. They don't want to file a lawsuit, Patti said. They haven't even consulted a lawyer. They just want Alyeska to admit they should have found Bart sooner and promise, in a binding way, to improve.

Unfortunately, court action is beginning to look like the only way to accomplish this, Bruce Rizer said.

Alyeska certainly doesn't want to get sued, but its safety practices are excellent and its safety record very good, Heiser said. He acknowledged no errors in the search. Resort employees have met with the Rizers without lawyers, as a gesture of good will, and are listening to the family's suggestions. "They've had good ones," Heiser said.

Rick Friedman is an experienced Anchorage trial lawyer who has nothing to do with either side. He called the situation "a familiar pattern" when a child dies.

"The problem is, of course, there's so much more going on than the legal system can deal with. ... It's not about money. The parents don't want money. Money trivializes them.

"The parents want to have something constructive come out of this horrible event," Friedman said. "They want to have it have some meaning. ... The parents have anger because they feel they've been mistreated.

"On the other side you have this large institution, they are defensive ... They're afraid to do anything. ... It's tailor made for somebody sitting them both down and saying, 'Let's take this bad situation and make something good come from it.'"

The obvious common ground is safety, Friedman suggested. Both sides care about it. "What they need is either a scholarship or a safety program or something that makes the world a bet-

Schedule of Events

- 11:00-11:30 Fish Hatchery Orientation
11:30-11:45 Welcome and Recognition
11:45-12:00 Dedication of the
Bart Rizer Reading Area
12:00-1:00 Continuous Fish Hatchery
and Reading Area
orientations by volunteers

Refreshments served.

Thank you for attending.

A special thank you to:

Claudia Bieber for organizing refreshments.

Loren Holmes and Garreth Brown for many hours of work.

*Lori Cabana for her original stained glass design for the library
of a bear reading books.*

Darleen Starry, Principal, Bear Valley Elementary School.

*Library Helpers: John Cowgill, Carol Fuller, Donna and
Jennifer Gallagher, Amy Goodman, Kathy Hawkins, Dianne
Holmes, Pat Moores, Kay Palmer, Joe Sloan, and Linda Weiford.*



Saturday
September 12, 1992



Welcome to the
Dedication
of the
Bart Rizer Reading Area
and
Salmon Hatchery Center





The Bart Rizer Reading Area— A Community Project with Help from Around the World

The Bart Rizer Reading Area was developed through the combined efforts of the Bear Valley Elementary School staff, friends, family, and members of the business community.

Nearly 1,000 books have been purchased for, or donated to, the Bart Rizer Reading Area. Contributions were sent from the four corners of the United States—from Southern California to Alaska and from Maine to Florida. Donations came from other countries as well, including Canada, Australia, and New Zealand. Nearly \$7,000 has been collected.

Getting the books on the shelves was a long process that took hundreds of hours. Here's how the room was created:

- **Purchasing the Books.** Bart's friends and relatives selected books they knew he liked. Then donations flowed in. *Once Upon a Time Book Store* and *Alaska News Agency* gave generous discounts. Many people contributed books from their personal libraries; some of them were sent all the way from Australia.
- **Designing the Bookplate.** Rie Muñoz, well-known Alaskan artist, designed the bookplate. Bart had the privilege of meeting Ms. Muñoz when she was a visiting artist at Bear Valley Elementary School. She adapted the bookplate from her recently released print, *Red Skiff, Ketchikan*. She personalized the print by writing Bart's name on the side of the skiff. (The family's seine skiff was named the *Bart Alan*.)
- **Cataloging.** Ruth Jean Shaw, Manager of the Anchorage School District Library Resources, allowed Bart's family and friends to work in their offices throughout the summer to process the books. She assigned Kathy Benson to oversee the project. Processing a book takes about one hour from beginning to end. Each book goes through about 15 steps; however, these 15 steps cannot be performed by one person at one time. So the process was a stop-and-go operation.
- **Shelving.** In September most of the books were ready for the new shelves in the library. Books are arranged in three categories: fiction, nonfiction (including reference books), and "everybody." The books depict what Bart enjoyed in life—*humor, travel, and sports*. You may notice the 700 section of nonfiction is the largest—the *Arts*. This category includes *humor*—the type of book Bart liked best. Another large section is 900, *Geography and History*, which reflects Bart's love of traveling.

- **Decorating.** Family and friends set up the room and arranged the books and pictures. The pictures relate to various aspects of Bart's life. He loved New Zealand and wanted to live there one day. He also enjoyed traveling in Australia. He particularly liked the Sydney Opera House and the strange animals found in Australia. Bart's favorite football team, the Raiders, sent a colored poster signed by team members. Coach Art Shell also sent an autographed black-and-white photograph of himself. All the pictures were framed by Bart's special friend "Ernie" (Brian Millis). Keith Appel, another well-known Alaskan artist and long-time family friend, donated a print that will be placed in the reading area in the near future.

Salmon Hatchery Center



Alaska's largest source of income comes from the fishing industry. The Alaska Department of Fish and Game, Fisheries Rehabilitation Enhancement and Development (FRED) Division, has created an educational program for Alaskan children. This program was developed and is supervised by Bart's friend, Fritz Kraus. This unique program allows children to follow the development of the five species of Alaska salmon—Coho, Chinook, Chum, Sockeye, and Pink—from the egg to the fry stage.

A 30-gallon tank will be on display in Mr. Farrell's classroom this year. The tank will contain Coho salmon eggs. Students will monitor the water temperature and quality (fluorides and chlorine) daily. Each week 50 percent of the water must be exchanged to maintain water quality.

Activities generated from this project are limited only by students' and teachers' imaginations. This science center allows students to use their reading, writing, and math skills as they monitor the progress of the developing salmon eggs. They will follow the scientific process by guessing how the salmon will develop, writing their thoughts, and checking their ideas with others as time progresses. Students will also be responsible for taking care of the tank and assigning jobs.

Math skills will be an important part of this project. Students will learn how to convert our measurement system to the metric system and how to convert temperatures from Fahrenheit to Celsius.

The fourth grade curriculum will include the history of the salmon fisheries, fish farming, and fish management. Students will learn about the different types of fisheries including gear types, species, and spawning areas. They will study the cycle of the salmon from egg to spawning.

When the eggs hatch in the spring, students will transport the hatched eggs to Cheney Lake in East Anchorage and release them. Cheney Lake is currently stocked with rainbow trout and salmon from other school incubation projects.

resort contacted them, Patti said. No one sent a letter of condolence or offered to brief them. "We were craving information," she said.

up a paper two years from now and another kid died?

place, because (Bart) not going to have a chance to make the world a better place." P. 01

Hilbschman - Rizer

- Patti Rizer

40

different controllers and selectors. The Court also stated that if this was the co-defendant's goal, the lower court should have issued a clarifying order.

The case was tried to the court, with Otis Elevator assuming the defense of its co-defendant (the building owner in which the elevator was installed, which Otis had contracted with to maintain and repair the elevator). The Court held that Otis Elevator was bound by the trial court's determination that it was negligent, observing that Otis Elevator had an opportunity to defend against the plaintiff's theory that the building owner had a non-delegable duty to see that the elevator service in the building operated correctly by offering evidence that Otis Elevator was not negligent. The Court indicated that Otis Elevator had failed to convince the trial court that it was not negligent, and it was therefore bound by this result.

However, the Court did conclude that the lower court erred by denying Otis Elevator the opportunity to present evidence that may have shown that the building owner's independent negligence contributed to the plaintiff's injuries, since negligence on the part of a tort-feasor indemnitee bars its claim to indemnity. With one minor exception, the Court affirmed the award entered in favor of the plaintiff, and remanded Otis Elevator's defense of independent negligence on the part of the building owner for trial.

Editor's Note: Otis Elevator demonstrates that the trial courts should be particularly careful when considering requests for litigation-ending sanctions, particularly where burdensome discovery requests are involved. Burdensome discovery requests should not be utilized as a strategic litigation tool to avoid a trial on the merits and litigation-ending sanctions should not be imposed unless there truly has been willful non-compliance with a clear discovery order.

Rental Car Damage Waiver

In *Lauvetz v. Alaska Sales and Service db/a National Car Rental*, Opinion No. 3775 (Alaska 1991), the issue addressed by the Court was whether the operator of a rental car was entitled to the coverage afforded by a collision damage waiver in the vehicle rental agreement if the operator was intoxicated while operating the vehicle. The vehicle was rented by John Osborne, who listed Thomas Lauvetz as an authorized driver. Osborne also accepted the optional collision damage waiver option. There was no discussion regarding the terms and conditions of the collision damage waiver option between the rental car agent and Osborne and Lauvetz. Osborne and Lauvetz did not read the terms and conditions of the waiver.

The rental vehicle was damaged while Lauvetz was driving it. Lauvetz pled no contest to a charge of reckless driving as a result of the accident. National subsequently filed suit against Lauvetz and Osborne, seeking both compensatory and punitive damages for the wreck of the van. The trial court ruled that the terms of the collision damage waiver option were valid, binding and enforceable, and rejected the position of Lauvetz and Osborne that the collision damage waiver option was insurance.

In first reviewing the applicable law, the Supreme Court adopted Section 211 of the Restatement (Second) of Contracts (1981). This section establishes the general enforceability of the terms of standardized forms, without regard for whether the customer reads or understands those terms. This general enforceability is however subject to limitations of reasonableness, and customers are not bound to unknown terms which are beyond the range of reasonable expectation. The Court then indicated that the relevant question was not whether a prohibition against drunk driving in the collision driving waiver was unreasonable, but rather whether the purchaser of the damage waiver reasonably expected the waiver to be subject to any exclusions. The Court then concluded that a consumer would not reasonably expect the damage waiver to be less than complete and that the average car renter would reasonably expect the collision damage waiver to relieve him of responsibility even if the damage were caused by his fault, regardless of whether this fault would be attributed to legal categories of negligence, recklessness, or volitional conduct. The Court concluded that the average car renter would not parse fault into fine legal categories. The Court therefore reversed the lower court's grant of partial summary judgment which had been entered in favor of National on the enforceability of the collision damage waiver exclusions.

Ski Resort Negligence Liability

Hilbschman v. City of Valdez, 821 P.2d 1354 (Alaska 1991), involved issues of the interpretation of Alaska's Limitations on Claims Arising from Skiing Act (the "Act") A.S. 09.65.135, comparative negligence, and a protective order limiting the defendant's discovery and use of evidence regarding the plaintiff's prior DWI conviction and prior drinking experience. Hilbschman sued the City of Valdez for injuries incurred as she went over a ski bump/jump at a city ski hill.

The Act precludes recovery by skiers from a ski area operator for injuries resulting from an inherent risk of skiing which is defined in the statute as including, but not limited to, in part, variations or steepness in terrain, snow or ice conditions, and surface or subsurface conditions such as bare spots, forest growth and rock, and a skier's failure to ski within the limits of the skier's ability. The particular ski area in question is considered a beginner's hill, measuring 1,300 feet from top to bottom with a 208 foot vertical rise. Several bump/jumps could be found on the hill at the time of the accident. The trial court held that the plaintiff's injuries resulted from an inherent risk of skiing, but found that a genuine issue of material fact existed regarding whether the City complied with the statute's requirement of posting signs at prominent locations within the ski area listing the inherent risks of skiing and the limitation on liability of the ski area operator as provided by the Act.

While the facts surrounding the accident were disputed, since the Court was reviewing a summary judgment ruling, the Court drew the inferences in the plaintiff's favor, as she was the party opposing summary judgment. The operator had testified that he thought the jump was dangerous. However, neither the ski lift operator nor the head of the ski patrol were aware of any other skier having ever been injured on the jump where the plaintiff's injury occurred. (The plaintiff landed on her tailbone after skiing off of the jump and was paralyzed from the waist down.) An expert in ski area design and planning thought it was inappropriate to have this jump, or any jump, on a beginner's hill, unless the jump were marked as appropriate only for more advanced skiers. The plaintiff, 15 years old at the time of the accident, estimated that she had consumed between one and a half and three beers before the accident. She also asserted that she had taken four ski runs between her last consumption of beer and the time of the accident and that she did not fall on any of those runs. An emergency medical technician who attended the plaintiff stated that the plaintiff's breath smelled of alcohol, but that she was not obviously intoxicated.

Following two motions for reconsideration of the trial court's ruling on the City's motion for summary judgment, the trial court submitted the issue of adequate signage to a jury, which returned a verdict in favor of the City.

The Supreme Court concluded that the statute in question was intended to bar recovery for those actions which only the skier could control and that were beyond the ski area operator's control. The Court concluded that the Act preserved the common law duty of reasonable care of ski area operators and that evidence of negligence on the part of a ski area operator takes the case out of the inherent risk of skiing context. The Court stated that the statute aids trial courts by listing those risks which are considered inherent in the sport of skiing; those risks which are obvious and necessary. The Court defined necessary dangers as those which cannot reasonably be eliminated by the area operator. The Court also observed that a risk not listed in the statute may still be an inherent risk of the sport if necessary and obvious, but this risk must be subjectively obvious to the skier, who must know of the risk's presence, understand its nature, and freely and voluntarily choose to encounter it.

Reviewing the evidence, the Court concluded that genuine issues of material fact existed as to whether the jump constituted an inherent risk of skiing. The Court noted that a jump is not specifically listed in the statute and its risk is not necessarily obvious or necessary. The plaintiff had testified that she did not think that the jump was hazardous in the way it was designed or constructed before she went off of it. The Court also noted testimony that the jump was not safe for beginner skiers and that the jump was not marked as being suitable only for expert skiers.

The Court held that the duty owed to a skier for a natural or an artificial condition is governed by the holding in *Webb v. City and Borough of Sitka*, 561 P.2d 731, 733 (Alaska 1977), which adopted the rule that a landowner must act as a reasonable person in maintaining his property in a reasonably safe condition in view of all of the circumstances, including the

46

likelihood of injury to others, the seriousness of the injury, and the burden on the respective parties of avoiding the risk. The Court observed that the origin of the danger (whether natural or artificial) is applicable to the rule announced in *Webb* as it affects the burden on the respective parties of avoiding the risk, and it is also relevant to the issue of the ski area operator's knowledge of the danger. However, the Court held, as a matter of law, an artificially created jump cannot be considered a variation or steepness in terrain or a surface condition, concluding that these categories relating to the inherent risk of skiing do not encompass artificially created conditions. Since the evidence was conflicting as to whether the jump was a natural variation in terrain or surface condition or an artificial structure, a jury question was presented as to whether a natural or artificial condition created the jump.

The Court also concluded that a jury question was presented with regard to the issue of whether the plaintiff was skiing beyond her ability. The Court ruled that, to bar an action, "skiing beyond one's ability" means 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. However, once evidence of a ski area operator's negligence exists, the operator is free to argue that the skier voluntarily and unreasonably assumed a negligently created risk. The skier's negligence would then reduce recovery under the doctrine of comparative negligence. If an injury is caused by a combination of an inherent risk of skiing and the ski area operator's negligence, the doctrine of comparative fault will apply to determine the extent of the operator's negligence.

The Court next rejected the plaintiff's contention that the posted signs in the ski area were insufficient as a matter of law to comply with the statutory requirements. Although no "trail" signs were posted, the Court noted that the ski area consisted of one small open hill and that there were no real designated trails as such. The Court also noted evidence indicating that a number of signs were posted at the bottom of the hill, where they were likely to be seen by skiers, and affirmed the trial court's ruling that genuine issues of material fact existed as to whether the signage at the ski area complied with the statutory requirement.

The Court also affirmed the lower court's order prohibiting the City from discovering or using evidence relating to the plaintiff's prior driving while intoxicated conviction and prior drinking experience pursuant to Evidence Rule 402 and 403. The Court concluded that the evidence of prior drinking did have marginal relevance on the issue of the plaintiff's knowledge of the effect alcohol can have on one's judgment. The Court noted that the plaintiff admitted having knowledge about the effects of alcohol and that there was other evidence available to the City regarding the plaintiff's consumption of alcohol and impairment. The Court concluded that the potential for prejudice, that the jury might punish the plaintiff for her prior conduct, might outweigh the marginal relevance of the prior

the accident, as opposed to prior incidents of drinking, was relevant to the issue of comparative negligence.

Negligence/Liquor Sales

In *Loeb v. Rasmussen*, 822 P.2d 914 (Alaska 1991), the Court held, by a three-two majority, that a liquor licensee who violates A.S. 04.16.050 or A.S. 04.21.051 is not entitled to assert the comparative fault of the minor/consumer in an action for damages resulting from the unlawful sale of intoxicating liquor. A.S. 04.21.050 requires a liquor licensee and their employees to procure proof of the age of a person attempting to purchase alcoholic beverages whenever the licensee or their employee questions or has reason to question whether the person has attained the age of 21. A.S. 04.16.051 prohibits the furnishing of an alcoholic beverage to a person under age 21.

The case arose out of a motor vehicle accident which followed the purchase of liquor by a 17-year-old from the defendant's liquor store. The minor was injured in the motor vehicle accident and, approximately one year after the accident, committed suicide. The minor's estate subsequently instituted claims for personal injury and wrongful death. The evidence indicated that neither the decedent nor her companion at the time of the purchase, also a minor, were asked to furnish proof of their age by employees of the liquor store. The jury entered a verdict finding the liquor store negligent for furnishing alcohol to the decedent without first asking her for proof that she was of lawful age and that this negligence was the legal cause of the minor's injuries, but not the cause of her death by suicide. In considering the defendant's comparative negligence defense, the jury assigned 90% of the fault to the decedent. The primary issue presented on appeal was whether the lower court erred as a matter of law in allowing the defendants to assert a comparative negligence defense.

The majority reasoned that the policy of the relevant statutes controlling and prohibiting sales of intoxicating liquors to minors was, in part, to protect minors from the effects of alcohol, and that allowing a comparative negligence defense would run counter to this policy. The opinion notes that there is a "considerable split of authority" on this issue from other jurisdictions, but concludes that the holding best comports with existing Alaska law and sound public policy. Based on this rationale, and the conclusion that a claim of intentional misconduct was simply another way of characterizing a minor's conduct in illegally consuming alcohol and then driving an automobile, the majority also concluded that a liquor licensee which violates A.S. 04.21.050 and A.S. 04.16.051 is also precluded from asserting intentional misconduct as a defense.

The dissent notes that there is nothing in the statutory language which indicates a legislative intent to preclude a minor's comparative negligence from being considered in connection with a liquor licensee's violation of A.S. 04.16.051 and A.S. 04.21.050. The dissent also

the statutes. The dissent also criticizes the majority's reliance on a special exception to the former all or nothing rule of contributory negligence, noting that the adoption of pure comparative negligence rendered the exception unnecessary. In part II of the dissent, Justice Moore, addressing the majority's position that the relevant statutes are designed to protect minors, who apparently are deemed incapable of assessing the risks involved in the use of alcohol, notes that minors well under the age of 21 are criminally tried as adults because they are deemed capable of conducting themselves according to the same standards expected of adults. Minors operating motor vehicles are also expected to conform to an adult standard of care.

Editor's Note: As the majority opinion states, the decision represents a choice of policy. The majority opinion observed that the liquor licensee could have avoided liability by securing, in good faith, proof that the decedent was of lawful age before selling her liquor. A.S. 04.21.020. Of course, a number of factual disputes surrounding this exception can be envisioned, from basic disputes between a liquor store employee and minor purchaser with regard to whether proof of age was requested and produced to questions concerning alteration of information concerning age on a driver's license or other misrepresentation of age by the minor purchaser. The legislature can, of course, indicate through legislative action whether it intended to prevent a jury from considering a minor's comparative fault or intentional misconduct in such cases.

Statute of Limitations

In *Pedersen v. Zieski*, 822 P.2d 903 (Alaska 1991), the Court broadened the inquiry as to when a cause of action accrues. Since the trial court granted the defendants summary judgment based on the statute of limitations, the Court took the view of the facts which was most favorable to the non-moving party, Pedersen. Briefly summarized, the facts were that Pedersen had been injured in a motor vehicle accident on November 22, 1983. His aorta was severed in the accident and doctors clamped the ends of the severed aorta for a total of 44 minutes in order to stop the flow of blood during reattachment. After the operation, Pedersen's legs were permanently paralyzed.

Pedersen asked his surgeon and another doctor what had caused his paralysis. He was told that the paralysis could have been caused by the swelling of the spinal cord and blood loss from the damaged aorta. Neither doctor gave an indication that the operation had caused Pedersen's paralysis. Pedersen was discharged from the hospital on December 5, 1983. He did not obtain or review his medical records at that time. The surgeon's discharge summary noted that the biggest problem was that post-operatively the patient had an anterior spinal cord syndrome secondary to repair of the transected thoracic aorta. The records also show that Pedersen's aorta was clamped for approximately 44 minutes.

At the end of December, 1983, Pedersen

SB

44

(File 4)

Letters/

calls

LETTERS OF SUPPORT FOR SB 44 FROM:

ALASKA HOTEL & MOTEL ASSOCIATION

ALASKA SKI AREAS ASSOCIATION

ALASKA VISITORS ASSOCIATION

ANCHORAGE CONVENTION & VISITORS BUREAU

ANCHORAGE ECONOMIC DEVELOPMENT CORPORATION

DAYS INN

MUNICIPALITY OF ANCHORAGE'S DEPARTMENT OF CULTURAL

& RECREATIONAL SERVICES

UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF

AMERICA LOCAL 1281

WESTMARK HOTELS



Alaska Hotel & Motel Association

PO BOX 104800 • ANCHORAGE, ALASKA 99510 • (907) 344-1778

January 19, 1993

Subject: SB-44, Civil Liability for Skiing Accidents

The Alaska Hotel and Motel Association supports SB-44 as written. The Alaska Hotel and Motel Association believes that many individual sports, including skiing, have inherent dangers which vary depending upon the individual participants judgement and skills. It would be impossible for a ski area operator to fully guarantee the total safety of every individual skier in every circumstance because of the natural varying inherent dangers of the sport.

The Alaska Hotel and Motel Association believes that ski area operators in the State of Alaska should be permitted to compete fairly with other ski areas throughout the USA and the world. To handicap Alaskan ski area operators through unfair or unnecessary legislation, will only serve to reduce the number of skiers who choose to ski in Alaska. This would certainly have a negative effect on the many supporting businesses of the ski industry, such as hotels and lodges, restaurants, transportation etc...

Max J. Lowe, CHA
Past Chairman
Alaska Hotel and Motel Association

SF

SENT BY: ANCHORAGE HILTON HOTEL; 1-19-93 ;12:08PM ;

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Alaska Hotel & Motel Association

P.O. BOX 104900 • ANCHORAGE, ALASKA 99510 • (907) 344-4778

January 18, 1993

Senator Tim Kelly
State Capitol
Room 101
Juneau, AK 99801-1182

Dear Senator Kelly:

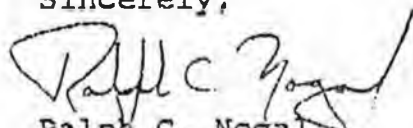
As President of the Alaska Hotel Motel Association, I would like to clarify our position as being POSITIVE in regards to Senate Bill #44 pertaining to civil liability for skiing accidents.

This bill will definitely increase economic development in tourism in our State because it will put our skier liability laws on equal footing with the laws in other Western ski areas in the United States. We will then be able to compete with these States and Canada. Even our own hotel, the Anchorage Hilton, of which I am the General Manager, will benefit because guests will come to ski Alyeska and possibly stay at our property, or any one of the other properties in the downtown area, on their way to or from Alyeska.

On behalf of all our membership, we firmly believe this bill should definitely be passed as quickly as possible to assist Alyeska.

Thank you for your assistance.

Sincerely,


Ralph C. Nogal

RCN/eh

Post-It™ brand fax transmittal memo 7571 # of pages > 1
From D. J. W. W. W. W. W.

*Alaska Ski Areas Association*

7015 ABBOTT ROAD
ANCHORAGE, ALASKA 99516
(907) 346-1446

Alaska State Senate
Senate Labor & Commerce
Juneau, Alaska
Attention: Tim Kelly, Chair

1-20-93

Dear Mr Kelly:

I was at Tuesdays public hearing but did not get a chance to testify so I am writing in support of SB 44. I am the Chairman of the Alaska Ski Areas Association and also the General Manager of Hilltop Ski Area here in Anchorage.

There are 13 downhill ski areas in Alaska: Cleary Summit, Ski Land, Ravenwood and Birch Hill all near Fairbanks. Black Rapids near Delta Junction. Hilltop, Hillberg, Arctic Valley and Alpenglow in Anchorage. Alyeska Resort in Girdwood. The Coast Guard Hill in Kodiak. Mt. Eyak in Cordova, and Eaglecrest near Juneau. In addition there are numerous organizations that prepare and operate Nordic trails: Chena Hot Springs Resort, Hatchers Pass Lodge and Anchorage Nordic Ski Club just to name a few.

There are many inherent risks in any sport. Skiing is no exception. Ski area operators sell access to a winter alpine or nordic environment not to a perfectly groomed danger free slope. This environment includes all manner of risks: weather, slopes, forest growth, snow conditions as well as some man made obstacles. All skiers should 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 absolutely "safe". Individual skiers must bear some of the 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 a ski area operator could not eliminate these risks, and to ensure that a ski areas could obtain insurance and 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 further development of winter tourism facilities in Alaska.

In December of 1991 the Alaska Supreme Court interpreted the statute as not preventing suits by injured skiers. Claiming an operator had failed to make the slopes "safe" for patrons. 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 that a ski area can still operate, ticket prices will have to increase substantially in order to cover the increased insurance premiums.

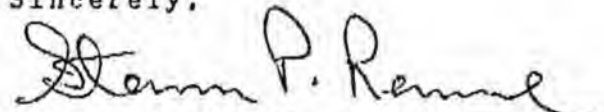
As a result of that Supreme Court decision the City of Valdez can no longer offer it's residents the recreation of downhill skiing. If this legislation does not pass perhaps other ski areas around the state will fall under the load of escalating premiums and frivolous law suits.

There is a segment of the community that believes that this legislation is proceeding only to protect a multinational corporation (Seibu) from liability. Most of the ski areas within the state are very small and most are products of the communities that they are located in. This legislation will affect all of them not just one of them and in most cases if insurance premiums rise as a result of poor legislative protection it will become cost prohibitive to operate. The ski areas are not trying to hide from their responsibilities to provide safety for the skiing public because we recognize that if we fail to do that soon we will be out of business.

Alaska has a lot to be proud of. Last year an Alaskan skier by the name of Hilary Lindh came home from the Olympics with a Silver Medal. If we fail to support this legislation where will the Hilary Lindh's of the future get a chance to practice and excel in this sport?

I urge you to please support this legislation!!

Sincerely,



Steven P. Remme
ASAA Chairman



ALASKA VISITORS ASSOCIATION

501 West Northern Lights, Suite 201 • Anchorage, Alaska 99503

Tel: (907) 276-6663 • Fax: (907) 258-4036

1991-92

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#92-03

RESOLUTION IN SUPPORT OF INHERENT RISKS OF SKIING LEGISLATION

WHEREAS, the sport of skiing is practiced by a large number of Alaskans and attracts visitors to the state who provide significant contributions to the state economy through the construction and operation of skiing facilities, and

WHEREAS, skiing is a critical element of efforts to increase fall/winter/spring visitation, and

WHEREAS, skiing is an exhilarating sport, the enjoyment of which includes several components: exercise, enjoyment of the outdoors, physical and mental challenges, and the excitement of taking risk, and

WHEREAS, skiing is conducted in an environment that includes natural variations of terrain, weather, and snow conditions and necessary man-made amenities created and maintained by ski area operators, and

WHEREAS, the sport of skiing is accompanied by inherent risks of accident and injury, and

WHEREAS, the Alaska Legislature in 1980 recognized these inherent risks and the individual skiers responsibility to assume them by enacting AS 09.65.135, "Limitations on Claims Arising From Skiing," and

WHEREAS, the Alaska Supreme Court, in *Hübchman vs. City of Valdez et al.*, rendered an opinion that undermines the intent and effectiveness of the act, and

WHEREAS, the cost of insurance and defense from suits involving the inherent risks of skiing are certain to rise dramatically as a result of the ruling, causing increases in ticket prices and threatening the continued operation of some areas, and

WHEREAS, legislation has been introduced to clarify provisions of the act and restore its effectiveness,

NOW THEREFORE BE IT RESOLVED, that the Alaska Visitors Association Board of Directors, on behalf of the membership and tourism industry party represents, endorses adoption of revision to AS 09.65.135, "Limitations on Claims Arising From Skiing," and will join public and private organizations seeking passage of Senate Bill 403 and House Bill 491.

Adopted by the Alaska Visitors Association
Board of Directors
February 21, 1992
Juneau, Alaska

Post-It

To
C

11-1-92

#93-01

Resolution in Support of Ski Safety and
Inherent Risks of Skiing Legislation

Whereas, skiing in Alaska has inherent risks caused by terrain, weather, equipment and individual skiers, and

Whereas, financially sound ski areas are a significant part of Alaska's winter tourism industry and resident recreation, and

Whereas, the steady growth of winter tourism provides jobs for residents and revenue to the state, and

Whereas, the rising cost of insurance and increasing threat of lawsuits as a result of not recognizing the sport's inherent risk could force the price of skiing to grow so much that the majority of Alaskans and visitors could not afford the sport, threatening the continued operation of many ski areas, and

Whereas, this issue has been recognized by other states, primarily in the western United States, where skiing is an important part of their winter tourism industry, through the enactment of appropriate liability laws, and

Whereas, if the inherent risk of skiing is not recognized and controlled in the state of Alaska, the state will remain non competitive in its efforts to attract winter visitors who would utilize established ski resorts and winter recreational areas,

Now Therefore Be It Resolved, that the Anchorage Convention and Visitors Bureau Board of Directors, on behalf of its more than 900 members, unanimously supports the passage of Senate Bill 44 and House Bill 41.

Adopted by the Anchorage Convention & Visitors Bureau
Board of Directors March 26, 1992

Larry G. Anderson
Chairman
Anchorage Convention & Visitors Bureau

**Anchorage!
Convention & Visitors
Bureau**

*Our Community's Way
of Attracting and
Serving Visitors*

1609 A Street, Suite 200
Anchorage, AK 99501-5162
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ANCHORAGE
ECONOMIC
DEVELOPMENT
CORPORATION

Honorable Tim Kelly
111 Capitol
PO Box V
Juneau, AK 99811

Dear Senator Kelly:

The Anchorage Economic Development Corp. (AEDC) supports SB44, Civil Liability for Skiing Accidents.

As you know, the AEDC's mission is to stimulate economic development. One industry we focus on because of its tremendous potential is tourism. We have fully supported Seibu Alaska's Alyeska Resort expansion and support development of the Glacier/Winner Creek areas as well.

Alaska's ski resort success will depend on how effectively we compete with other developable areas in the northwest United States and Canada. Passing SB44 is critical to Alaska's winter tourism because it will put Alaska on equal footing with its competitors on the issue of skier liability.

Because this bill will so greatly benefit an industry still in its infancy in Alaska, and will only harm a small sector of the economy (trial lawyers) in Alaska, the AEDC fully supports passing SB44.

Sincerely,

Scott E. Hawkins
President

JAN 19 '93 11:22 DAYS INN

P.1/1



Plaza Inn Hotels, Inc. d/b/a Days Inn - Anchorage
321 East Fifth Avenue
Anchorage, Alaska 99501-2654
(907) 276-7226
Fax (907) 278-6041

January 18, 1992

*Senator Tim Kelly
Capitol Building
Juneau, AK 99801*

Dear Senator Kelly:

RE: SB44

Unfortunately due to prior commitments I will be unable to attend the hearing on the Skier liability law. In lieu of not attending I would like to advise you of my concerns on this law.

As an avid skier and frequent user of the ski trails not only at Alyeska, but Alpenglow and Hilltop, I recommend that Alaska's skier liability law be brought into conformance with laws in other western states. Alaska can not afford to have laws more restrictive than it's competition. The potential for a world class resort, and the further development that it could bring, must be addressed at all levels. This development could be the start of winter tourism to rival other western states and Canada. Please Let's do what we can to remove any barricades to future development.

Thank You.

*Dennis J. Lavey
Managing Partner*

Municipality of Anchorage



P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650

TOM FINK
MAYOR

DEPARTMENT OF CULTURAL AND RECREATIONAL SERVICES

March 1, 1993

Senator Robin Taylor, Chair
Senate Judiciary Committee
Room 30
Juneau, Alaska 99801-1182

RE: CSSB44 & CSHB41 - Civil Liability for Skiing Accidents "Alaska
Ski Safety Act of 1993"

Dear Senator Taylor:

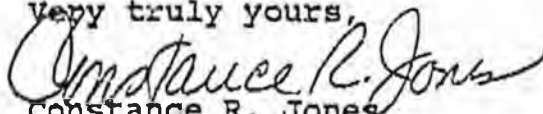
After careful review of both of the above pieces of legislation, our department supports passage of CSSB44 entitled the "Alaska Ski Safety Act of 1993".

Most of our primary concerns have been satisfactorily addressed, however, we would like to see Sec. 05.45.040 expanded to contain an exclusion for single rope tow operations with less than a 500' vertical drop as it pertains to providing ski patrols and meeting the standards of the National Ski Patrol System, Inc. and a reduced signage requirement. These requirements could be onerous for small, single rope tow operations. The same result may be achieved through alternate provisions of the ski area operators annual plan through the use of local paramedics, first-aid givers and the effective use of signage.

CSHB41 does not allow property owner input on the annual plan which we feel should be included. The House's substitute adds to Sec. 05.45.070 a new sub-section (d) describing requirements for policies covering reckless skiers, definitions, and procedures for correction. This shifts the enforcement of reckless skiing disciplines to the ski patrol. Our position is the enforcement should be with the ski area operators and their designated personnel, which may or may not be ski patrol.

We support your efforts in limiting ski area liability and recreation tort reforms.

Very truly yours,


Constance R. Jones
Director

cc: Anne Williams



UNITED BROTHERHOOD OF
Carpenters and Joiners of America

LOCAL UNION NO. 1281

407 DENALI

PHONE 276-3533

ANCHORAGE, ALASKA 99501
FAX: 276-7962



January 18, 1993

Dear Alaska Legislators:

This is a statement of support for SB 44, as submitted by Sen. Kelly

If Alaska is to grow and prosper in the clean, ecologically sound and renewable area of Tourism this bill should be supported.

The bill would put Alaska on even footing with the rest of the western United States. That, coupled with our natural beauty and long winters, should give Alaska a leg up for future economic development.

The only people that I can imagine not supporting SB 44 would be those people not willing to take responsibility for their own actions or lawyers looking for a little action.

Sincerely,

Phillip A. Thingslad
Business Manager
Carpenters Local 1281

PAT/we