

## Colorado ski industry enjoys protection from law, waivers

By Karen E. Crummy *The Denver Post* *The Denver Post*

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Colorado ski operators, protected by state law and further insulated by season-pass waivers, have escaped liability for such incidents as an inbounds avalanche, a ski instructor running into a 9-year-old, and a decaying bridge injuring a skier.

In the 34 years since [Colorado's Ski and Safety Act](#) was passed to protect mom-and-pop ski areas from lawsuits and soaring insurance costs, multibillion-dollar real-estate-development companies have come to own many of the state's 25 resorts.

Yet not only do they continue to enjoy protections under the ski act, season-pass waivers release them from additional negligence claims and require the person who sues them to reimburse their attorney fees and costs, a Denver Post review of 30 years of lawsuits found. In the few lawsuits that do move forward, skiers and snowboarders are limited to a \$250,000 cap for noneconomic damages.

To the public, ski resorts market skiing and snowboarding as safe — safer than cycling or swimming. But when they're sued, they shield themselves from legal claims by calling it an inherently dangerous sport.

"Things have gone over the edge in terms of how much the state statute protects (resorts)," said Kristi Ferraro, whose son was caught in an inbounds avalanche at Vail last year. The resort had roped off the entrance gate at the top part of a trail but not the entrance gate farther down the trail. Although Ferraro's son lived, and his parents are not suing, his 13-year-old friend Taft Conlin died.

"Colorado is going to become known as a place where you can kill skiers and not suffer any repercussions. And (skiers will) be blamed, be told it was your negligence that killed you," she said.

Only two of the state's ski areas — Wolf Creek and Powderhorn Mountain Resort — would discuss the ski statute and season-pass waivers.

"The ski act reduces the ambiguity of what's expected for the public and resorts," said Wolf Creek chief executive David Pitcher. "It would be a real problem if we did not have some level of legislation. Who knows what the cost of skiing would be without it?"

Powderhorn spokeswoman Gabrielle Michna said season-pass waivers are necessary because of carelessness by resort visitors.

"There's not going to be negligence by the resort. It's more if the pass-holder is negligent on their own," she said.

Skiers assume "inherent risks"

Colorado Ski Country USA, a trade group that represents all of the ski areas except those owned by Vail Resorts, proposed the safety act more than three decades ago and since has offered subsequent amendments. The group, which has donated more than \$522,000 to state candidates and groups within the past nine election cycles, refused to be interviewed or answer questions e-mailed to it but sent an e-mailed statement.

"The Colorado Ski Safety Act works to this day elegantly and well with its clear articulation of statewide requirements for skiers and ski areas. It clearly states that skiing is inherently risky," wrote spokeswoman Jennifer

Rudolph.

It was a Vermont skiing accident that led to Colorado's ski act. In the late 1970s, a [Vermont jury awarded \\$1.5 million](#) to novice skier James Sunday, who was rendered a quadriplegic after his ski caught on underbrush. The ski industry — and its insurers, who threatened to double and triple rates — panicked.

As a result, the Colorado legislature passed a law in 1979 spelling out the legal responsibilities for ski-area operators and skiers, including that skiers assume the inherent risks of the sport.

In 1990 and 2004, state lawmakers, citing ski resorts' insurance and legal costs, added amendments to the act, further broadening the statute's protection of ski operators by narrowly defining claims that can be brought against them.

"The (ski) statute sets a pretty high bar for plaintiffs to claim negligence on the part of the ski areas," said Summit County District Court Judge Terry Ruckriegle. "On the flip side, if there isn't some limitation, ski areas wouldn't survive."

Now, skiers and snowboarders have the duty to ski within their abilities, and they assume "the inherent dangers and risks of skiing" that are "a part" of the sport. Operators do not have to post warning signs of maintenance equipment going to or from a grooming project, and ski operators' protections have been expanded to all ski property, not only those areas designated for skiing.

Liability is capped at \$250,000 for noneconomic damages and \$1 million for economic damages, medical bills and lost earnings.

"The general thrust of the legislation is consistent throughout: Deliberately immunize ski operators to the greatest degree," said Denver ski lawyer Jim Chalat, who has represented skiers and snowboarders in lawsuits against resorts. "But victims don't have well-financed lobbyists."

The responsibilities of skiers and ski resorts vary from state to state, along with the definition of "inherent risks."

In Vermont, for instance, inherent risks apply only to those areas that are an "obvious and a necessary part" of the sport. Risks don't include hidden dangers, whether man-made or natural, said Vermont Law School professor Brian Porto.

In Colorado, the bar is much higher.

No exception for collision

Christopher Norris, a 28-year-old father of two, died last year in an inbounds avalanche in Winter Park's Trestle Trees. The morning of the day he died, the Colorado Avalanche Information Center warned of "widespread dangerous avalanche conditions" and recommended that skiers and snowboarders "enjoy the powder in the safety of the ski area."

His wife sued, arguing that the ski area was aware of danger warnings and "knew or should have known" that the tree area was unsafe. But Grand County District Court Judge Mary C. Hoak [ruled the resort wasn't required to post warning signs](#) or close the run. Avalanches, she said, are an inherent danger of skiing.

"The court is aware that this outcome may not appear just," Hoak wrote, but she was "obligated to interpret and fairly apply the law."

In 2009, a 9-year-old skier was hit and injured by a Breckenridge ski instructor who was on duty and allegedly skiing "unreasonably fast," according to the court complaint. U.S. District Court Judge William J. Martinez found that the [resort had immunity](#) because collisions with other skiers are listed as an inherent danger and risk under the act. The Colorado legislature, the judge said, did not carve out an exception for collisions with ski-area employees.

Attorney Michael Beaver, who has represented ski resorts, clubs and coaches, said some lawsuits "get publicity because they don't represent the norm."

"In the vast majority of ski accidents that occur, it's very clear that the ski-safety act does bar or doesn't bar the claim. And in most instances, it does bar the claim," he said.

Where the safety act doesn't bar a claim, season-pass waivers have filled in.

A federal judge in 2010 [held that a downhill-traveling skier at Snowmass](#) who collided with a snowmobile going uphill on an open trail could not sue the resort because he had bought a season pass.

"The specific risk of colliding with a snowmobile being operated by a ski resort employee is necessarily within the 'risks of skiing/riding' (waiver)" that the skier signed, wrote U.S. District Court Judge Marcia Krieger.

#### Waivers extend protection

In sports such as baseball, consumers assume the risks of ball-related injuries, such as being hit by a foul ball. However, attorneys said, the waiver wouldn't apply if a stadium beam fell on a spectator. In medicine, a patient's consent to the risks of surgery does not bar the patient from suing the doctor and hospital if the wrong leg is amputated, said attorney Jim Heckbert, who is representing both Norris' and Conlin's families.

But season-pass waivers — used by most, if not all, of the state's ski resorts — essentially extend resort protections beyond the ski act. Even as many of these ski areas have been gobbled up by big companies — Intrawest, Powdr Corp. and Vail Resorts — that own ski areas around the nation, and a number of ski areas have at least doubled in size, these waivers release them from "all liability" in exchange for the buyer's getting a discounted rate. In many cases, the buyer also agrees to [reimburse the resort for attorney fees and costs](#) if the buyer sues the resort for negligence, as well as to pay those costs if a third party, such as the buyer's medical insurer, sues the resort.

Parents are allowed to sign these agreements for their children. In 2002, the Colorado Supreme Court held that [waivers requiring a parent to release a child's negligence claims violated public policy](#). The next year, however, the [legislature passed a bill](#) specifically nullifying the court's holding.

Unlike season passes, lift tickets bought at the window generally do not include this extra waiver. This, some attorneys say, has created a two-tier system in which Colorado residents — who buy more season passes than visitors do — waive more of their rights.

"The only people that get punished with these waivers are the locals," Heckbert said.

Vail real-estate agent Julia Parsons was injured while skiing over a bridge at Vail Mountain. She said she suffered a deep gash from a protruding metal bracket on the bridge, which cost her about \$4,000 in medical bills. Her case was [dismissed](#) because she had signed a season-pass waiver. Vail Associates then filed a motion to enforce the indemnification clause, demanding [\\$102,000 in attorney fees and costs](#).

"She agreed to dismiss any right to appeal if Vail would drop the claim for attorney fees," said Joe Bloch, Parsons' lawyer. Bloch said he believes Vail pressed for attorney fees because the company didn't want the waiver issue to go up to the higher courts, which might find them against public policy.

That is exactly what happened in Utah. In 2007, the [Utah Supreme Court held](#) that ski operators are not at liberty to "use pre-injury releases to significantly pare back or even eliminate their need to purchase the very liability insurance the Act was designed to make affordable."

Judge Ruckriegle, who ruled three years ago that a season-pass waiver could not bar a plaintiff from suing, said differing legal opinions regarding season passes mean "it's time ... for season-pass waivers to move to the appellate level."

Some recent cases have gone against the resorts. Two people sued Vail Associates in 2007 after they sustained injuries — within a week of each other — when they inadvertently skied over an unmarked boundary at Beaver Creek, fell off a 19-foot retaining wall and dropped onto a paved access road.

The [Colorado appellate court found](#) there was a legitimate dispute as to whether the boundary was adequately marked. Both cases later settled.

"It's about accountability"

In the Taft Conlin case, [Vail Resorts argued that the suit should be dismissed](#) since the 13-year-old either "knew or reasonably should have known that the slope uphill from the gate was closed," and that avalanches are one of the inherent dangers and risks of skiing.

Broomfield County District Court Judge Patrick Murphy disagreed, saying that if the legislature intended to include avalanches within the [list of inherent dangers and risks](#) of skiing, it would have.

The case is now headed to a trial. Taft had a season pass, but Heckbert said Vail Resorts hasn't raised that as a defense yet.

Taft's mother, Louise Ingalls, said she and other parents had asked Vail to change their roping-and-signage policies, but the resort refused. She sued, she said, to get information about what happened and to make resorts change the way they do things.

"I felt like there was no option but to sue. It's not about the money. It's about accountability. If an inbound avalanche is an inherent risk of skiing, then what are we paying for?" she said. "How was my son supposed to know that on this day there was an avalanche danger?"

On Thursday, Vail Resorts issued a news release announcing that the lower gate on Prima Cornice will be closed whenever the upper gate is closed because of avalanche concerns. The company said it has been doing this since the season started.

"Vail Resorts takes safety as its highest priority," the release said, "and continually re-evaluates and adapts based on new information or changing skier behavior."

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About the series

Sunday: The system of investigating accidents at ski areas raises questions of thoroughness and accuracy.

Monday: Colorado's ski industry enjoys vast protection from liability.

Tuesday: Just how many people are injured skiing and snowboarding in Colorado is something of a mystery.