Colorado Ski Law in the 21st Century—Part 2

The No-Duty Doctrine for Ski Area Operators After *Redden*

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This is the second installment of a two-part article discussing the history of ski law in Colorado and how Redden v. Clear Creek Skiing Corp.*, decided on December 31, 2020, has significantly changed the duties imposed on ski area operators.*

In *Redden v. Clear Creek Skiing Corp.*, the Colorado Court of Appeals held that a skier's signed exculpatory agreement and waiver language on the back of a lift ticket waived the skier's statutory negligence claims under the Colorado Ski Safety Act (SSA) and the Passenger Tramway Safety Act (PTSA).[1] The *Redden* case overruled 40 years of precedent set by *Phillips v. Monarch*.[2] In *Phillips*, the court of appeals held that the statutory duties of care owed by a ski area operator to a skier could not be modified or extinguished by a lift ticket waiver or an exculpatory agreement.

All Colorado lift tickets and passes now include waivers or exculpatory agreements, whether incorporated through an Internet purchase, a written agreement from the rental or ticket window, the peel-off portion of the ticket, or small font print on the back of the lift pass. Except for a case where a court might find that the waiver did not encompass the precise risk that caused either an injury or a death, the *Redden* decision effectively immunizes ski area operators from all claims. Although a later court decision or legislation could clarify, limit, or reverse *Redden*, the decision renders the SSA[3] and the PTSA[4] to be dead letter for the majority of individuals injured as a direct result of a ski area operator's violation of the SSA's and PTSA's safety standards. Part 2 of this article describes and analyzes *Redden*, examines data concerning skier injuries and the economic impact of skiing, reviews how other jurisdictions construe exculpatory waivers in the ski resort context, and considers how this area of law may evolve post-*Redden*.

Unpacking *Redden*

Below is a detailed look at the facts, a summary of the trial court decision, and an analysis of the majority and dissenting opinions in the court of appeals decision in *Redden*.

Factual Background

Loveland Ski Area was opened in 1936 as the Loveland Ski Basin. Today, the ski area includes the Basin and the lower complex of two lifts referred to as Loveland Valley.[5] Clear Creek Skiing Corporation has operated the Loveland Ski Area since 1972.[6] For simplicity, this article refers to the defendant as "Loveland."

Charlotte Redden began skiing in Colorado in the 1980s. Redden was an intermediate skier and had taken ski lessons at Loveland, Keystone, Steamboat, and Arapahoe Basin. In September 2016, Redden purchased a Loveland Ski Area "4-Pak" ticket for the 2016–17 season. Exculpatory language appeared on the backs of those tickets.[7] Redden had also signed a release agreement when she purchased ski boots at the Loveland ski shop in April 2016.

The Ptarmigan lift at Loveland was installed in 2016. It is a fixed grip triple chair manufactured by Leitner-Poma that serves beginner and intermediate terrain. The lift travels 3,085 linear feet at a rope speed of 7.9 feet per second. The chairs are 45 feet apart. Colorado Passenger Tramway Safety Board (PTSB) acceptance test data for the Ptarmigan lift indicates that at full speed, a normal stopping distance for the lift is 18 feet, less than half the distance between two chairs. At normal operating speed, there is a six-second interval between chairs. Near the unloading board, there are signs affixed to the final two towers warning approaching passengers to "prepare to unload" and "keep tips up."[8]

In clear weather, the crest of the unloading ramp is visible from two chair lengths away. The "unload here" sign is at the break-over point of the ramp, just downhill of the top station bullwheel and from which the lower aspect of the unloading ramp first comes into view.

The Ptarmigan unload area is pictured in image 1. The yellow, vertical "unload here" sign is seen just behind the chair from which the skiers are unloading.

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At the unloading marker, the attendant's station is to the passengers' right. The attendant's station offers an unrestricted view of the entire unloading ramp and contains a lift operations control set that can slow, stop, and restart the lift.[9]

The view as a passenger approaches the unloading area of the Ptarmigan is shown in image 2.

In March 2017, Redden was skiing at Loveland on one of her 4-pak tickets. She boarded the Ptarmigan lift, and had the inside, left seat. One other passenger was on her chair, sitting on the far right. As Redden's chair came to the "unload here" sign, she saw that a passenger on a chair ahead had fallen on the ramp below the

break-over of the ramp. The fallen passenger was ahead of Redden on the unloading ramp. According to the lift attendant, he slowed the lift because a "patron was on the ground of the unloading ramp," and "the injured party tried to avoid the fallen person and fell herself."[10]

According to her complaint, however, as Redden's chair approached, she couldn't see the previous passenger who had fallen on the ramp. She alleged that the lift had not been slowed. As Redden stood up, her path was blocked and she was unable to navigate around the fallen skier on the unloading ramp. The chair on which she had been riding began to swing around the bullwheel and caught up with and struck Redden, seriously injuring her right hip.

Redden's Claims

In January 2018, Redden filed suit in Clear Creek County. In her complaint, Redden asserted statutory negligence claims founded on the SSA and also alleged a common law claim under the highest duty of care doctrine.[11]

Her statutory negligence claim asserted violations of the SSA, specifically, CRS § 33-44-104(2), which provides that a ski area operator's violation of any PTSA requirement or any rule promulgated by the PTSB shall, to the extent such violation causes harm, constitute negligence on the part of the ski area operator.[12]

To support her statutory negligence claims, Redden relied on the American National Standards Institute's (ANSI) B77 safety requirement's provision,[13] which the PTSB adopted and promulgated as a regulatory rule. The rule requires a lift attendant to assist passengers as they unload a chair and in other situations, and to choose "an appropriate action," which may include, without limitation, stopping the lift.[14] Relying on section 104(2) of the SSA, Redden alleged that Loveland violated this PTSB regulation and that its violation caused harm, thus giving her a clear statutory negligence claim.

At the factual heart of her claim, Redden argued that the lift attendant merely needed to stop the lift and assist the skier ahead of Redden off the ramp to clear the ramp, which would have avoided the pileup and allowed Redden to unload onto a clear ramp, avoiding injury.

Trial Court Decision

After discovery, Loveland moved for summary judgment. It argued that the rental agreement's and ticket's exculpatory waivers barred Redden's claims. The trial court granted summary judgment. Its order relied heavily on the Tenth Circuit's analysis in *Brigance v. Vail Summit Resorts, Inc.*,[15] which held that "exculpatory agreements do not conflict with Colorado public policy merely because they release liability to a greater extent than the statutory inherent risk bar on claims set out in the SSA."[16] The trial court found, based on *Jones v. Dressel*,[17] which identified four factors courts must consider to determine exculpatory agreements' enforceability, that Loveland's waivers were enforceable absent any specific legislative provision barring exculpatory agreements from preempting the SSA's statutory duties. Redden appealed.

Colorado Court of Appeals Decision

On December 31, 2020, the court of appeals affirmed the summary judgment by a 2-1 vote. Judge Dailey wrote the majority opinion; Judge Hawthorne joined. Judge Davidson concurred in part and dissented in part.

Majority opinion. The majority opinion notes at the outset that "[s]kiing is one of our state's biggest tourist activities and supports not only the ski area operators but also businesses that provide services (e.g., food, lodging, entertainment) for skiers. But it is also a common source of injury."[18]

The majority then recognized the general doctrine that exculpatory agreements purporting to shield a party from liability for its own simple negligence are disfavored. It explained that exculpatory agreements are therefore closely scrutinized under four factors set out in *Jones*: (1) the existence of a duty to the public, (2) the nature of the service performed, (3) whether the contract was fairly entered into, and (4) whether the intention of the parties is expressed in clear and unambiguous language.[19] The court described the first two factors as focusing on public policy questions, including whether the service provided is of great importance to the public or is instead recreational.[20] The court explained that the third and fourth factors focus on the agreement's "fairness and clarity."[21]

The majority assumed that Redden was engaged in a recreational activity. Relying on *Bauer v. Aspen Highlands Skiing Corp.*,[22] the court noted that "[a]lthough skiing is a recreational activity enjoyed by many, by definition and common sense, it is neither a matter of great public importance nor a matter of practical necessity."[23] Redden did not challenge the district court's conclusion that the waivers passed scrutiny under the first two *Jones* factors, and the court of appeals agreed that such a challenge would have no basis.[24]

With respect to the third factor, the court found it important that Redden had signed the waiver in two separate locations and acknowledged reviewing the agreements' contents. Regarding the fourth factor, the court found that the exculpatory agreement and ticket waivers unambiguously covered riding on a ski lift because it applied to "all risks" of the "activity," which included ski lift use.[25]

The court rejected Redden's key argument that the waivers were invalid because they were contrary to the public policy expressed in the PTSA and SSA. The majority held that the "acts establish a framework preserving common law negligence actions in ski and ski lift context" and do nothing to prohibit exculpatory agreements.[26] Citing *Brigance*, the *Redden* majority found that Redden had failed to identify an SSA or PTSA provision that altered a common law duty. The waivers, according to the majority, were not contrary to public policy. Nor did the SSA bar exculpatory agreements overriding the statutory safety negligence provisions.[27] The court observed that the SSA's imposition of a duty on a lift operator to take appropriate action, such as slowing the chair, assisting the passenger, or stopping the lift, amounted to no more than a common law duty to "use reasonable care" when operating a ski lift.[28] The SSA therefore did not create a distinct, new duty of care but instead essentially incorporated the preexisting common law negligence standard.[29] The court suggested that recognizing a statutory negligence claim in this context would unjustifiably reward "crafty" pleading.[30]

The court acknowledged that *Phillips* held that modification of statutory duties imposed by the SSA would "violate the public policy"

expressed in the SSA.[31] However, it distinguished and partially overruled *Phillips*. The court explained, quoting *Brigance*, that

> "apparently unlike the agreement at issue in *Phillips*, the [two agreements here] do not appear to alter the duties placed upon [the ski resort] under the SSA," and the division's decision in *Phillips* "appears to be inconsistent with the more recent pronouncements by the Colorado Supreme Court and General Assembly regarding Colorado policies toward the enforceability of exculpatory agreements in the context of recreational activities."[32]

The court also stated that Colorado law had long permitted parties to contract away negligence claims in the recreational context and that courts will not assume that the General Assembly meant to displace underlying common law principles absent clear legislative expression of that intent.[33] The *Redden* majority discussed an Alaska statute similar to the SSA and noted that Alaska's statute specifically included an anti-waiver provision.[34] The court stated that if the Colorado legislature wanted to invalidate waivers, "it knew how to do so."[35]

Thus, the court held that the PTSA and SSA do not preclude enforcement of exculpatory agreements.[36] In large part, the *Redden* majority relied on the logic in *Brigance*, which noted that the General Assembly overruled the Colorado Supreme Court's holding in *Cooper v. Aspen Skiing Co.*[37] when it enacted CRS § 13-22-107. *Cooper* held that Colorado's public policy prohibited a parent or guardian from releasing prospective negligence claims on behalf of a minor who injured himself while skiing. In *Redden*, the court agreed with the conclusion in *Brigance* that the General Assembly's enactment of § 13-22-107 "*suggests* it did not intend and would not interpret the SSA as barring [exculpatory] agreements for adults."[38] The *Cooper* case and subsequent legislation did not involve whether an exculpatory agreement may waive a statutory negligence claim under the SSA or the PTSA.[39]

Concurring and dissenting opinion. Judge Davidson agreed that the exculpatory agreement was effective as to Redden's common law negligence claims alleging that Loveland breached the highest duty of care.[40] However, Judge Davidson pointedly dissented on the majority's decision to hold that the exculpatory agreements and lift ticket language effectively nullified Redden's statutory negligence claims. In her dissent, Judge Davidson noted that Colorado state and federal court cases upheld exculpatory agreements in recreation cases, and "reluctantly agreed" with the majority's interpretation of "legislative inaction as approval of the use of exculpatory agreements" to preclude Redden's negligence claim.[41] However, she disagreed with the majority's conclusion that the exculpatory agreements barred Redden's negligence per se claim.[42]

"She concluded that these facts established that the agreement altered that duty, distinguishing the case from *Brigance* and other cases the majority cited. According to Judge Davidson, Redden should have had her day in court."

Notwithstanding the absence of an explicit no-waiver provision in the SSA, Judge Davidson wrote that ski lift operators should not "be immunized by private contract from their explicit statutory duties as set forth in the SSA and PTSA."[43] Judge Davidson explained that Redden's amended complaint specifically alleged applicable statutory duties, including the specific PTSB regulation governing the conduct of the lift attendant at the top station of Ptarmigan, and how Loveland violated them.[44] She observed that the SSA expressly provides a private civil remedy for violation of that duty.[45] She concluded that these facts established that the agreement altered that duty, distinguishing the case from *Brigance* and other cases the majority cited.[46] According to Judge Davidson, Redden should have had her day in court.

Petition for certiorari. On February 25, 2021, Redden filed her petition for certiorari. She argued that review was necessary to preserve the statutory duties and liabilities placed on ski area operators "in the name of public safety" by the SSA and the PTSA.

The petition argued that the PTSA was enacted to further the safety policy interests of the state and that the statutory implementation of that policy was achieved primarily by placing the primary responsibility for the operation of ski lifts upon ski area operators.[47] The petition noted that the General Assembly's legislative declaration for the SSA stated that it was enacted "to supplement the [PTSA]." The petition relied on the supremacy provision of the SSA in CRS § 33-44-114, which states that "[i]nsofar as any provision of law or statute is inconsistent with the provisions of this article, this article controls." The Colorado Supreme Court has previously held that, under this section, the SSA has "primary control over litigation arising from skiing accidents."[48] The Tenth Circuit has similarly held that "[t]his provision expresses the Colorado Legislature's clear intent to abrogate the common law when it conflicts with the Act."[49]

At the heart of the petition was Redden's contention that the PTSA and SSA, when analyzed together, demonstrate an unmistakable legislative intent to bar ski area immunity for

lift-related injuries in the name of public safety.[50] Moreover, Redden argued that a waiver does not comport with public policy simply because it involves a recreational activity; the test is whether the effects of the waivers are consistent with the SSA and the PTSA. In her petition, Redden cited precedent establishing that parties may not contract away statutory requirements and contravene the public policy of Colorado. Counsel asserted that the relevant waivers in *Redden* were "incompatible with the language, intent, and purpose of the SSA and PTSA."

Loveland's opposition brief to the petition urged the Court to view the court of appeals decision narrowly. Loveland argued that the decision below did not hold that all claims for negligence per se can be waived in an exculpatory agreement and that the significance of *Redden* did not amount to a license for ski area operators to completely avoid regulatory efforts regarding ski safety. Loveland emphasized that the PTSA's power to enforce safety regulations did not depend on tort remedies. Loveland's brief further drew heavily on footnoted disagreements between the majority and the dissent relating to the scope of the decision.[51]

On September 7, 2021, the Colorado Supreme Court denied certiorari. Justice Hood would have granted on the issue "[w]hether a ski area operator can contractually exculpate itself from the statutory duties and liabilities imposed on it [by] the General Assembly in the Ski Safety Act (SSA) and the Passenger Tramway Safety Act (PTSA)."[52]

It is still early to analyze the effects of *Redden* on the ski industry and the public, but a discussion of the scale of the ski industry in Colorado and general injury statistics is helpful to understand the context of future policy considerations.

Economics and Injuries

In 2021–22, Colorado resorts drew about 14 million skier visits (s/v).[53] This is the largest single-state share of the 61 million skier visits throughout the United States.[54] The Colorado ski industry remains the leading economic force in Colorado's tourism trade. A study published in 2015 found that Colorado's ski industry generated $4.8 billion in annual economic output, including $1.9 billion per year in labor income.[55] The study included "secondary effects" such as some elements of real estate transactions.

More recent federal statistics confirm that Colorado leads the nation in the economic benefits of skiing.[56] "Snow activities" generated $1.27 billion of added value to the Colorado gross domestic product, according to the Bureau of Economic Analysis, an office within the US Department of Commerce.[57] Another study showed that the White River National Forest alone generated an economic impact of $1.6 billion, of which ski area operators contributed $26.4 million in revenue-based rent to the forest service.[58]

Although most injury statistics are available only through various independent studies and are therefore difficult to obtain and summarize, recent data from the Colorado Department of Public Health and Environment shows that around 55 skiers and snowboarders per day visit emergency departments in Colorado during ski season.[59] The National Ski Areas Association (NSAA), which tracks catastrophic injuries from ski areas around the country, reports an average of 45 catastrophic injuries per season nationwide.[60]

The policy considerations of these economics and injury and fatality statistics will determine whether one side is favored or whether the interests of the industry and the public are balanced. Prior to *Redden*, the policy established by the SSA would bar claims for injuries relating to the so-called inherent risks of skiing. Yet the violation of the SSA's mandatory safety measures would be a basis for a claim. Following *Redden*, Colorado courts have confronted the effects of *Redden* on skier and passenger safety with mixed results.

Exculpatory Agreements in Colorado Post-*Redden*

There have been few post-*Redden* ski injury cases, but a review of two trial court decisions may give some insight into whether and when Colorado courts will enforce exculpatory agreements.

Huber v. Granby Realty

The Grand County District Court was the first trial court after *Redden* to determine the enforceability of an exculpatory agreement in a lift accident case and thus test the policy questions of balancing interests and how to construe *Redden*'s reach. The court's ruling in *Huber* shows that the specific facts of a particular accident need to be examined to determine if the exculpatory agreement at issue effectively waived the relevant risks and/or statutory duties.

Granby Realty owns and operates the Colorado resort Ski Granby Ranch (Granby Ranch). Before Granby Ranch opened in December 2016, it had a contractor upgrade the electric drive of the Quick Draw Express, the primary chairlift at the base of the resort. The lift is a Leitner-Poma four-passenger detachable grip high-speed lift. With the assistance of an independent engineer, the contractor upgraded and adjusted the tuning, wired the existing controls to the new drive, and completed testing.

After the upgrade, Granby Ranch received numerous guests' reports of the chairlift's atypical movements while onboard the lift.[61] These reports included complaints of intense swinging and bouncing. These concerns were conveyed to Granby Ranch management but were not forwarded to the PTSB. Although Granby Ranch conducted further lift attendant training, there was no evidence of efforts to correct or close the Quick Draw lift.

After she arrived at Granby Ranch with her family, Kelly Huber picked up her prepaid season passes for herself and her two children and signed an exculpatory agreement with Granby Ranch. While the Hubers were riding the Quick Draw Express, the chairlift malfunctioned. The Hubers' chair swung violently and crashed, ejecting Ms. Huber and her children from the chairlift. They fell 25 feet from the chair. Ms. Huber died from blunt force trauma from the impact with the ground. The children were also injured.

The Hubers ultimately filed their case in Grand County District Court.[62] Granby Ranch filed a motion to dismiss, contending that the waiver barred the Hubers' claims. Shortly before the court of appeals issued the *Redden* decision, the Grand County District Court denied the motion to dismiss. It found that although the exculpatory agreement was written broadly and referenced risks inherent in riding

chairlifts, including falling when loading or unloading, it did not cover a lift malfunction or a 25-foot fall from a chair swinging into a lift tower and ejecting the occupants. Grand County District Court Judge Mary Hoak, relying on the fourth element of the *Jones* test—a clear expression of the parties' intention—wrote that "[t]he Court does not find, in light of the facts alleged, that the Season Pass Agreement expresses the intentions of the parties in clear and unambiguous language."[63]

Then, *Redden* was published on December 31, 2020, two months after the *Huber* court denied Granby Ranch's motion to dismiss. After reviewing its order and analyzing *Redden*, Judge Hoak declined to reverse her earlier order. She wrote: "The waiver certainly encompasses the riding and loading and unloading of lifts, but the Court does not believe Ms. Huber understood that language to mean she could be thrown to her death by a mechanical malfunction of the lift from high in the air."[64] The case thereafter settled.

The *Huber* case highlights the tension between the SSA and exculpatory agreements. To enforce the agreements, ski area operators must be able to identify specific language that warns skiers of the precise risks that are being accepted. To avoid the effect of a waiver, injured skiers, or their survivors in wrongful death cases, need to show that the waiver did not warn of the express risks and negligence that caused the injuries and constituted negligence. But claims under the statutory negligence doctrine invoked by section 104 of the SSA are now barred by waiver.

Varnish v. Vail Corp.

In *Varnish v. Vail Corp.*, the Eagle County District Court considered a wrongful death case based on alleged breach of the duties of care under the SSA and breach of the traditional highest duty of care owed by a lift operator to passengers. The case settled before reaching a decision on the merits, but it is helpful to review the arguments made in light of *Redden*.

Vail Mountain's Blue Sky Basin opened in 2000. The terrain is served by three chairlifts. Chairlift 37, also known as the "Skyline Express," is a four-seat detachable high-speed lift installed in 1999 by Poma. At 10:23 a.m. on February 13, 2020, Jason Varnish tried to board Chairlift 37. However, when the chair arrived at the "load here" board, the seat of the chair was in the "up" position against the backrest of the chair. A rubber bumper attached to the chair seat frame that is normally covered by the seat when the seat is in the "down" position caught on the lower portion of Varnish's jacket, entangling the jacket with the chair frame as the chair began to rise out of the lower lift terminal. Varnish was lifted up and out of the lower terminal by his jacket as the chair ascended out of the terminal. The chairlift was stopped with Varnish about 70 feet up the lift line, but entangled by his jacket about eight feet off the ground, Varnish was out of reach of bystanders and the lift attendant. At 10:33 a.m. the chair was reversed, and Varnish was evacuated. His condition was by then critical, and he died later that day of positional asphyxiation.[65]

The family sued, asserting that Vail had breached its statutory duties of care under the SSA and the traditional highest duty of care, and alleging that the lift attendant was at fault for not pushing the chair seat down and for not stopping the lift when Varnish was unable to load properly.[66]

Vail stated that the chair had been operated in accord with the PTSB rules and regulations and within the highest standard of care.[67] Moreover, Vail stated that Varnish had entered into three separate liability waivers with Vail, which it claimed were enforceable and barred the family's claims.[68]

Vail filed a motion for summary judgment based on the waivers. In response, the family argued that the lift attendant's conduct violated the rules, regulations, and standards for the operation of chairlifts, particularly with regard to the evacuation of the chairlift, the delay in stopping and reversing the lift, and Vail's failure to have a ladder at hand at the lower terminal of Chairlift 37. Vail responded by arguing that *Redden*'s reach went far beyond the narrow reading that Loveland had argued supported its opposition to the petition for certiorari. The *Redden* opinion, it argued, barred any claim under the PTSB regulations, including regulations relating to training, evacuation procedures, and management of Chairlift 37. Shortly after the motion for summary judgment was filed, the parties settled the case.

The Varnish case never reached the focused question of whether an exculpatory agreement would bar claims for a negligently managed rescue or an evacuation of the chairlift. Nor did the facts lend themselves to the related questions of the precise duty owed by ski patrol's rescue, resuscitation, and first aid care.[69] Exculpatory agreements are unenforceable in the context of traditional medical care. The hospital-patient/physician-patient relationship falls within the category of agreements affecting the public interest, which cannot be barred by exculpatory language.[70]

Would an exculpatory agreement—a skiers' waiver and release—relieve a ski area operator's ski patrol from conducting search and rescue, or reasonably rendering emergency care? While there is no general duty to rescue, a duty may arise when someone has a "special relationship" with the victim.[71] In Colorado, the Colorado Premises Liability Act (CPLA) is likely the guiding source for any ski area liability not covered by the SSA. However, in contrast to Loveland's contention in *Redden* that the waivers had narrow applicability, when ski accident claims are brought under the CPLA, those claims have also been barred by an exculpatory agreement embedded in a lift pass.[72]

Until additional post-*Redden* cases arise to provide additional guidance for how Colorado law will develop, we can look to other states with large ski industries, which are also facing waiver litigation, to provide perspective as to whether courts and legislatures favor waivers over their state's ski safety acts, or favor skiers' rights over the industry waivers.

Exculpatory Agreements in Ski Cases in Other Jurisdictions

State courts have seen exculpatory agreement disputes in other states with significant ski industries, including Vermont (4.7 million annual s/v),[73] Oregon (2.0 million annual s/v),[74] Washington,[75] and Utah (5.3 million annual s/v).[76] Vermont courts have voided exculpatory agreements based on public policy. Oregon courts have found exculpatory agreements

unconscionable, while a waiver was upheld in a Washington case. A Utah Supreme Court decision found a waiver unenforceable as against public policy, but the legislature later enacted legislation permitting waivers to abrogate the statutory duties of care for ski operators.

Vermont

In *Dalury v. S-K-I, Ltd.*, the Vermont Supreme Court examined how other states, including Colorado, evaluate exculpatory agreements' enforceability and ultimately held that when determining what constitutes the public interest, courts should consider the totality of the circumstances "against the backdrop of current societal expectations."[77] The Court rejected the ski resort's argument that its exculpatory agreement should be upheld because ski resorts do not provide an essential public service.[78] The Court held that whether or not a ski resort provides an essential public service does not resolve the public policy issue.[79] Ultimately, the Court explained that "when a substantial number of such sales take place as a result of the seller's general invitation to the public to utilize the facilities and services in question, a legitimate public interest arises."[80]

In *Dalury*, the Court found that the public policy implications underlying Vermont's premises liability law were determinative because ski area operators owe their customers the same duty as any other business, which is "to keep its premises reasonably safe."[81] The Court explained that those who own or control the land can both "properly maintain and inspect their premises, and train their employees in risk management" and "insure against risks and effectively spread the cost of insurance among their thousands of customers."[82] The Court concluded that it was "illogical, in these circumstances, to undermine the public policy underlying business invitee law and allow skiers to bear risks they have no ability or right to control."[83] The *Dalury* decision remains good law in Vermont.[84]

Oregon

The Oregon Supreme Court has held that the enforcement of a release between a skier and the operator of a ski area was unconscionable.[85] In *Bagley v. Mt. Bachelor, Inc.*, the Court recognized that an exculpatory release was not an agreement between equals. The Court explained that a commercial enterprise exercised its superior bargaining strength by requiring its patrons to sign an anticipatory release on a take-it-or-leave-it basis as a condition of using its facilities. "Simply put, plaintiff had no meaningful alternative to defendant's take-it-or-leave-it terms if he wanted to participate in downhill snowboarding."[86]

Following the Vermont Supreme Court decision in *Dalury*, the Oregon Supreme Court relied on the public policy considerations embodied in the common law of business premises liability. "Business owners and operators have a heightened duty of care toward patrons—invitees—with respect to the condition of their premises that exceeds the general duty of care to avoid unreasonable risks of harm to others."[87]

Referencing Oregon's Skier Responsibility Law, the Court held that the law "did not abrogate the common-law principle that skiers do not assume responsibility for unreasonable conditions created by a ski area operator insofar as those conditions are not inherent to the activity."[88] Oregon's Supreme Court thus voided the exculpatory agreement but left in place the "inherent danger" doctrine and its protections for ski area operators.

Directly conflicting with *Redden*, the Court stated that "the fact that defendant does not provide an essential public service does not compel the conclusion that the release in this case must be enforced."[89] Citing *Dalury*, the Court continued, "[w]hile interference with an essential public service surely affects the public interest, those services do not represent the universe of activities that implicate public concerns."[90]

The Court further explained:

> It is true that ski areas do not provide the kind of public service typically associated with government entities or heavily regulated private enterprises such as railroads, hospitals, or banks . . . . [Ski areas] are open to the general public virtually without restriction, and large numbers of skiers and snowboarders regularly avail themselves of [defendant's] facilities. To be sure, defendant['s] business facilities are privately owned, but that characteristic does not overcome a number of legitimate public interests concerning their operation.[91]

The Court concluded by stating that the "defendant's business operation is sufficiently tied to the public interest as to require the performance of its private duties to its patrons."[92]

Despite the Oregon Supreme Court's focused holding, the ski industry launched a campaign to legislatively reverse *Bagley*.[93] In early 2023, the Oregon Senate Committee on the Judiciary took up Senate Bill 754, which would have allowed recreational businesses and organizations to use releases of liability to waive ordinary negligence.[94] The bill was never heard and never made it out of committee.

Washington

In *Chauvlier v. Booth Creek Ski Holdings, Inc.*, the Washington Court of Appeals disagreed with *Dalury* and *Bagley*.[95] It rejected the plaintiff's argument that a preinjury waiver cannot be used to abrogate the duty imposed on ski area operators. The court explained that "[u]nlike medical experimentation, which the [Washington] Supreme Court has deemed a matter of public importance, skiing cannot be said to be vital for the benefit of mankind."[96]

Utah

Although ultimately abrogated by statute, in *Rothstein v. Snowbird Corp.*, Utah's Supreme Court found that "[t]he bargain struck by the [Ski Safety] Act is both simple and obvious from its public policy provision: ski area operators would be freed from liability for inherent risks of skiing so that they could continue to shoulder responsibility for noninherent risks by purchasing insurance."[97] As such, the Court held that by extracting a preinjury release from the plaintiff for liability due to their negligent acts, [the ski area operator] had breached this public policy bargain.

The Court concluded that "[t]he legislative goal expressed in the Act of easing the task of ski area operators to insure themselves against noninherent risks creates the presumption that ski area operators will confront those

risks through insurance and not by extracting contractual releases from skiers." In direct contrast to *Redden*, the *Rothstein* Court determined that the burden should be on the ski area operators "to persuade the Legislature to expressly preserve their rights to obtain and enforce preinjury releases."[98]

Ski area operators eventually did that and, effective May 12, 2020, the Utah legislature enacted legislation that explicitly allowed waivers to abrogate the statutory duties of care imposed on Utah's ski area operators. The new law specified that a skier may (1) enter into an agreement with a ski area operator before an injury to waive a statutory claim that the skier is permitted to bring against a ski area operator, or (2) release the ski area operator from a claim that the skier is permitted to bring under the Utah Ski Act.[99]

Conclusion

Redden is hard to square with the final savings clause of the SSA, which reads: "Insofar as any provision of law or statute is inconsistent with the provisions of this article, this article controls."[100]

Under *Redden*, with its limitation of statutory regulation of safety responsibilities expressed in the SSA and PTSA and the long-standing doctrine of the highest duty of care in the operation of ski lifts, the costs of injuries, damages, and losses of skiing death and injury in Colorado fall primarily to individual skiers and their families.

Statutory duties of care under the SSA are significantly limited post-*Redden*, except in cases of gross negligence or in the rare case of a catastrophic lift malfunction similar to that in *Huber*. It is an open question whether *Redden* would bar claims based on the ski area operators' duty to rescue[101] or its ski patrollers' duty to render reasonable first aid.[102] The SSA remains the authoritative source of skiers' duties. Skiers' claims for injuries, damages, and losses against negligent skiers or snowboarders in collisions remain viable claims under the SSA.

Both Judge Gorsuch, in *Espinoza v. Arkansas Valley Adventures, LLC*,[103] and the majority in *Redden* challenged the General Assembly for failing to impose any bar on the exculpatory agreements or ticket waivers. Legislative action is likely the only path to comprehensively regulate exculpatory agreements in the ski industry. CL



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NOTES

1. *Redden v. Clear Creek Skiing Corp.*, 490 P.3d 1063 (Colo.App. 2020), *cert. denied*, No. 21SC94, 2021 Colo. LEXIS 785 (Colo. Sept. 7, 2021).

2. *Phillips v. Monarch Recreation Corp.*, 668 P.2d 982 (Colo.App. 1983). *Phillips* is discussed in more detail in Chalat et al., "Colorado Ski Law in the 21st Century—Part 1: The No-Duty Doctrine for Ski Area Operators After Redden," 52 *Colo. Law.* 42 (Apr. 2023), https://cl.cobar.org/features/colorado-ski-law-in-the-21st-century-part-1.

3. Ski Safety Act of 1979, CRS §§ 33-44-101 et seq.

4. CRS §§ 12-150-102 et seq.

5. https://en.wikipedia.org/wiki/Loveland_Ski_Area.

6. *See* Clear Creek Skiing Corp. summary, Colo. Sec'y of State, bit.ly/3WEYyoO.

7. Petition for Certiorari at 8 n.2, *Redden v. Clear Creek Skiing Corp.*, No. 2021SC94, 2021 Colo. LEXIS 785 (Colo. Feb. 25, 2021). The 4-pak Loveland lift tickets measured 3 inches by 3.25 inches in size. The waiver on the reverse side contained more than 350 words placed behind the adhesive backing and set out in 6-point font.

8. Plaintiff's Response to Defendant's Motion for Summary Judgment, ex. 2 at 4 (Bayer, expert witness report for plaintiff) (image 1), *Redden v. Clear Creek Skiing Corp.*, No. 2018cv30003 (Clear Creek Cnty. Dist. Ct. Dec. 21, 2018); Defendant's Reply in Support of Motion for Summary Judgment Pursuant to CRCP, ex. E, at 56 (Heon, expert report for defendant), *Redden*, No. 2018cv30003.

9. Bayer report, *supra* note 8 at 11 (image 2).

10. Defendant's Reply in Support of Motion for Summary Judgment, ex. D, Operator's Report, *Redden v. Clear Creek Skiing Corp.*, No. 2018cv30003 (Jan. 11, 2019).

11. *Bayer v. Crested Butte Mountain Resort, Inc.*, 960 P.2d 70 (Colo. 1998), *as modified on denial of reh'g* (June 22, 1998) (ski lift operator must exercise highest degree of care commensurate with lift's practical operation, design, construction, maintenance, and inspection, regardless of season; this highest duty of care was not preempted or superseded by enactment of PTSA or SSA).

12. CRS § 33-44-104(2) ("A violation by a ski area operator of any requirement of this article 44 or any rule promulgated by the passenger tramway safety board pursuant to section 12-150-105(1)(a) shall, to the extent such violation causes injury to any person or damage to property, constitute negligence on the part of such operator.").

13. ANSI B77.1–2011 § 4.3.2.3.3 (b).

14. *Id.* Complaint and Jury Demand ¶ 29, *Redden v. Clear Creek Skiing Corp.*, No. 2018cv30003 (Jan. 18, 2018) (relying on ANSI B77.1-2011 § 4.3.2.3.3).

15. *Brigance v. Vail Summit Resorts, Inc.*, 883 F.3d 1243, 1250–53 (10th Cir. 2018). *See also Raup v. Vail Summit Resorts, Inc.*, 734 F.App'x 543, 546 (10th Cir. 2018).

16. *See* Chalat et al., *supra* note 2 at 48–49. Notwithstanding the SSA language that the inherent risks of skiing do not include statutory negligence claims invoked by a violation of the PTSA and its rules, "[t]he 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." CRS § 33-44-103 (3.5).

17. *Jones v. Dressel*, 623 P.2d 370, 376 (Colo. 1981). The four factors include (1) the existence of a duty to the public, (2) the nature of the service performed, (3) whether the agreement was entered into fairly, and (4) whether the intention of the parties is expressed clearly and unambiguously. *See* Order Granting Defendant's Motion for Summary Judgment, *Redden*, No. 2018cv30003 (Jan. 31, 2019).

18. *Redden*, 490 P.3d at 1065.

19. *Jones*, 623 P.2d 370.

20. *Redden*, 490 P.3d at 1068.

21. *Id.*

22. *Bauer v. Aspen Highlands Skiing Corp.*, 788 F. Supp. 472, 474 (D.Colo. 1992) (applying *Jones*).

23. *Redden*, 490 P.3d at 1068 ("For good reason *Redden* does not contest the district

court's conclusion that the exculpatory agreements were not objectionable based on the first two *Jones* factors: 'Although skiing is a recreational activity enjoyed by many, by definition and common sense, it is neither a matter of great public importance nor a matter of practical necessity.'") (citing *Bauer*, 788 F. Supp. 472 at 474 (ski rental agreement barred claim for negligently set ski bindings); *Raup*, 734 F.App'x at 546 (lift unloading accident); *Rumpf v. Sunlight, Inc.*, No. 14-CV-03328, 2016 WL 4275386, at *1–4 (D.Colo. Aug. 3, 2016) (applying *Jones* in a lift loading accident); and *Squires v. Goodwin*, 829 F.Supp.2d 1062, 1073 (D.Colo. 2011) (noting the parties did not dispute that skiing "is a recreational service, not an essential service"), *aff'd sub nom. Squires v. Breckenridge Outdoor Educ. Ctr.*, 715 F.3d 867 (10th Cir. 2013) (disabled skier whose skiing companion lost control of her sled)).

24. *Redden*, 490 P.3d at 1068.

25. *Id.* at 1071.

26. *Id.* at 1073.

27. *Id.*

28. The particular ANSI standard was amended by the 2011 ANSI B-77. Prior to 2011, the ANSI B-77 code had provided that "[s]hould a condition develop in which continued operation might endanger a passenger, the attendant shall stop the aerial lift immediately and advise the operator." 2006 ANSI B-77 3.3.2.3.3. The 2011 amendments changed the regulation to read: "The attendant should respond by choosing an appropriate action, which may include any of the following. 1) assisting the passenger; 2) slowing the aerial lift (if applicable); 3) stopping the aerial lift; 4) continuing operation and observation."

29. *Redden*, 490 P.3d at 1074–75, n.10.

30. *Id.* ("[I]t seems hard to see a rational basis on which the law might treat such similar (identical?) claims so differently based merely on how they are pleaded, rewarding the crafty but penalizing the pedestrian pleader.").

31. *Id.* at 1071.

32. *Id.* at 1076.

33. *Id.*

34. *Id.* at 1073–74.

35. *Id.* at 1074.

36. *Id.* at 1075.

37. *Cooper v. Aspen Skiing Co.*, 48 P.3d 1229 (Colo. 2002). Jim Chalat was amicus curiae for Cooper.

38. *Redden*, 490 P.3d at 1073, n.9 (citation omitted) (emphasis added by court of appeals).

39. *Cooper v. US Ski Ass'n*, 32 P.3d 502, 510 (Colo.App. 2000), *rev'd sub nom*; *Cooper v. Aspen Skiing Co.*, 48 P.3d 1229 (Colo. 2002).

40. *Redden*, 490 P.3d at 1076.

41. *Redden*, 490 P.3d at 1076–78 (Davidson, J., dissenting) ("[B]y its plain language, the legislature clearly intended to create a negligence per se claim for violation of the specific statutory duties in the SSA, I am unpersuaded by the majority's reliance on [*Espinoza*] . . . to suggest that plaintiff's statutory negligence per se claim was properly barred as nothing more than a common law negligence claim with a different label . . . . The legislative intent of the SSA is clear; we have no need . . . to search for it.").

42. *Id.* at 1076.

43. *Id.*

44. *Id.* at 1076–77.

45. *Id.* at 1077.

46. *Id.* at 1077–78.

47. Petition for Certiorari 8, *Redden*, No. 2021SC94, 2021 Colo. LEXIS 785 ("The act's purpose is to assist in safeguarding life, health, property, and the welfare of the state in the operation of passenger tramways.") (citing CRS § 12-150-101 (2019) (legislative declaration) and *Bayer v. Crested Butte Mt. Resort*, 960 P.2d at 73)).

48. *Stamp v. Vail Corp.*, 172 P.3d 437, 444 (Colo. 2007). *See also Hendrickson v. Doyle*, 150 F. Supp.3d 1233, 1237 (D.Colo. 2015).

49. *Doering ex rel. Barrett v. Copper Mountain, Inc.*, 259 F.3d 1202, 1212 (10th Cir. 2001).

50. Petition for Certiorari 10–11, *Redden*, No. 2021SC94, 2021 Colo. LEXIS 785.

51. *Redden*, 490 P.3d at 1078, n.10 and 1076, n.1 (Davidson, J., dissenting).

52. *Redden*, No. 21SC94, 2021 Colo. LEXIS 785.

53. Blevins, "Colorado Ski Areas Set a New Visitor Record During the 2021–22 Ski Season," *Colo. Sun* (June 9, 2022), https://coloradosun.com/2022/06/09/colorado-skier-visits-vail-resorts-2021-2022.

54. "2021–22 Was a Record-Breaking Ski Season With Rocky Mountain Region Seeing The Highest Spike in Visitors," *Denver Post* (May 18, 2022), https://www.denverpost.com/2022/05/18/ski-season-record-breaking-visitors.

55. Leonhart, "Colorado Sees $4.8 Billion Economic Impact from Skiing, Snowboarding Industry," *Vail Daily* (Dec. 11, 2015), https://www.rrcassociates.com/case-studies/economic-impact-of-skiing-in-colorado.

56. Blevins, *supra* note 53; Reeves, "Colorado Ski Resorts See Big Visitation Numbers," 9News (June 9, 2022), https://www.9news.com/article/sports/ski/colorado-record-skier-visits/73-649358bc-35a5-475e-8758-ae74cca3bd8f. *See also* Slevin, "An Unprecedented year for Vail Valley Real Estate," *Vail Daily* (Jan. 22, 2021), https://www.vaildaily.com/news/eagle-valley/an-uprecedented-year-for-vail-valley-real-estate.

57. Outdoor Recreation Satellite Account, 2021-Colorado, https://apps.bea.gov/data/special-topics/orsa/summary-sheets/ORSA%20-%20Colorado.pdf.

58. Blevins, "Colorado's White River Is the Country's Busiest National Forest, With a $1.6B Impact. But Can It Keep Up?" *Colo. Sun* (Dec. 20, 2022), https://coloradosun.com/2022/12/20/white-river-national-forest-recreation-economy.

59. Blevins, "Up to 55 Injured Skiers and Snowboarders Arrive at Colorado Emergency Rooms Each Day, Analysis Shows," *Colo. Sun* (Dec. 16, 2020), https://coloradosun.com/2020/12/16/skiing-snowboarding-injuries-colorado-cdphe-emergency.

60. *Id.*

61. *See generally, Huber v. Granby Realty Holdings, LLC*, No. 2019CV30046 (Grand Cnty. Dist. Ct. Sept. 29, 2020).

62. A case filed in Colorado federal district court was dismissed for forum non conveniens. *See Huber v. Granby Realty Holdings, LLC*, No. 1:17-cv-03024, 2019 U.S. Dist. LEXIS 90620 (D.Colo. May 30, 2019).

63. Combined Order Denying Defendants' Motions to Dismiss Plaintiff's First Amended Complaint 13, *Huber*, No. 2019CV30046 (Sept. 29, 2020).

64. Order Denying Defendants' Motion to Reconsider Court's Order Dated September 29, 2020 on the Basis of New Authority 3, *Huber*, No. 2019CV30046 (June 29, 2021).

65. Plaintiffs' Response in Opposition to Defendant's Motion for Summary Judgment, *Varnish v. Vail Corp.*, No. 2021CV16 (Eagle Cnty. Dist. Ct. Dec. 9, 2022).

66. Amended Case Management Order 3, *Varnish*, No. 2021CV16 (Nov. 10, 2021).

67. Defendant Vail Corp.'s Reply in Support of its Motion for Summary Judgment 10-13, *Varnish*, No. 2021CV16 (Dec. 23, 2022).

68. *Id.* at 4, 6 (arguing that the PTSB regulation relating to passenger evacuation, Rule 3.3.2.5.7 is a general rule: "Violation of a CPTSB regulation constitutes 'negligence' under the Ski Safety Act, *see* CRS [§] 33-44-104(2), and Plaintiffs do not dispute that negligence claims can be waived under Colorado law.").

69. *See, e.g.*, *Spence v. Aspen Skiing Co.*, 820 F.Supp. 542, 544 (D.Colo. 1993). In *Spence*, Judge Nottingham granted plaintiffs' motion for new trial, holding that a ski patroller's negligent efforts to initiate an IV that resulted in an infiltration could not be excused merely because the plaintiff required aid, due to her own contributory negligence (citing *Jensen v. Archbishop Bergan Mercy Hosp.*, 459 N.W.2d 178 (Ne. 1990), *Whitehead v. Linkous*, 404 So.2d 377 (Fla.Dist.Ct.App. 1981), and *Matthews v. Williford*, 318 So.2d 480 (Fla.Dist.Ct.App. 1975)). Judge Nottingham wrote: "It would be inconsistent with the reasonable and normal expectations of both parties for the court to excuse or reduce the [ski patrol's] liability simply because it was the patient's own fault that she required care in the first place. *Id.* at 544.

70. *Tunkl v. Regents of Univ. of California*, 383 P.2d 441, 441–42 (Cal. 1963) (exculpatory provision in agreement between a hospital and an entering patient affects the public interest and is therefore invalid); *Ash v. N.Y.U. Dental Ctr.*, 564 N.Y.S.2d 308, 310 (N.Y.App. Div. 1990) (exculpatory agreement "between a dental clinic and its patient, implicates both the State's interest in the health and welfare of its citizens, as well as the special relationship between physician and patient and that it would be against public policy to uphold such an agreement").

71. *McHenry v. Asylum Ent. Delaware, LLC*, 260

Cal. Rptr. 3d 51, 62 (Cal.Ct.App. 2020) (quoting Restatement (Third) of Torts § 40, subdiv. (a) ("An actor in a special relationship with another owes the other a duty of reasonable care with regard to risks that arise within the scope of the relationship.")). Included within those special relationships is an owner or occupier of premises which then owes a duty of rescue to an invitee. 33 ALR 3d 301 (originally published in 1970). Purver, "Duty of one other than carrier or employer to render assistance to one for whose initial injury he is not liable," 33 ALR 3d 301 (1970).

72. *Gutekunst v. Vail Summit Resorts, Inc.*, No.2020-cv-30072, 2021 WL 4620716 (Summit Cnty. Dist. Ct. June 18, 2021) (court held exculpatory agreement barred claim in a slip and fall in bathroom at a ski resort).

73. Lynn, "Vermont, Nation See Growth in Skier/Rider Visits," VT Ski and Ride (June 9, 2022), https://vtskiandride.com/vermont-nation-see-growth-in-skier-rider-visits.

74. McDonald, "Ski Areas See Drop in Visits," *Bulletin* (Mar. 21, 2007), https://www.bendbulletin.com/localstate/ski-areas-see-drop-in-visits/article_ad676735-b576-53e2-96ca-376c40ab9212.html. *See also* Associated Press, "Total Skier Visits Hits Record in 2021-2022 Season," NewsChannel21 (May 13, 2022), https://ktvz.com/news/ap-oregon-northwest/2022/05/13/total-skier-visits-hits-record-in-2021-2022-season.

75. Statistics for Washington state alone do not appear to be available, but the NSAA indicates that the 24 ski areas in Washington and Oregon had a record number (4.5 million) of s/v in 2022–23. *See* Blevins, "'A Season to Celebrate' as U.S., Rocky Mountain Ski Areas Experience Record Visitation," *Colo. Sun./Durango Herald* (May 29, 2023), https://www.durangoherald.com/articles/a-season-to-celebrate-as-u-s-rocky-mountain-ski-areas-experience-record-visitation. Alaska, California, Idaho, Montana, Oregon, and Washington have 43 resorts among them that are members of the Pacific Northwest Ski Areas Association (PNSAA). The PNSAA resorts serve 5.5 million guests annually. https://pnsaa.org/about. The statistics underscore the significance of the Colorado ski industry.

76. Berman, "Despite A Mediocre Snow Year, This State Just Broke Its Own Record for Skier Visits, Utah," Ski (June 15, 2021), https://www.skimag.com/news/utah-reports-record-skier-visits.

77. *Dalury v. S-K-I, Ltd.*, 670 A.2d 795, 798 (Vt. 1995) (citation omitted).

78. *Id.*

79. *Id.* at 799.

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Spencer v. Killington, Ltd.*, 702 A.2d 35 (Vt. 1997); *Kearney v. Okemo L.L.C.*, No. 5:15-cv-00166, 2016 U.S. Dist. LEXIS 106011 (D.Vt. Aug. 11, 2016).

85. *Bagley v. Mt. Bachelor, Inc.*, 340 P.3d 27, 45 (Or. 2014). *See also Becker v. Hoodoo Ski Bowl Dev., Inc.*, 346 P.3d 620, 624 (Or.Ct.App. 2015). Oregon courts have also held that a lift ticket release did not bar liability for a non-inherent risk of a ski area operator's marking and signage of a hazard. *See, e.g., Steele v. Mt. Hood Meadows Or., LTD.*, 974 P.2d 794 (Or. 1999).

86. *Bagley*, 340 P.3d at 39.

87. *Id.* (citations omitted).

88. *Id.* at 41 (citation omitted).

89. *Id.* at 43.

90. *Id.* (quoting *Dalury*, 620 A.2d at 799).

91. *Id.* (citation omitted).

92. *Id.* at 44.

93. SB 754, 82nd Legis. Assembly, Reg. Sess. (Or. 2023).

94. Letter from Dave Byrd (NSAA Director of Risk & Regulatory Affairs) and Jordan Elliott (PNSAA President) to Or. S. Comm. on Judiciary re SB 754 (Feb. 17, 2023), https://bit.ly/3P0pihK. Yet the *Dalury* court noted that "[s]kiers, on the other hand, are not in a position to discover and correct risks of harm, and they cannot insure against the ski area's negligence." *Dalury*, 670 A.2d at 799.

95. *Chauvlier v. Booth Creek Ski Holdings, Inc.*, 35 P.3d 383, 389 (Wash.Ct.App. 2001).

96. *Id.* at 388 (internal quotation marks omitted).

97. *Rothstein v. Snowbird Corp.*, 175 P.3d 560, 564 (Utah 2007).

98. *Id.* at 565.

99. Utah Code Ann. § 78B-4-405.

100. CRS § 33-44-114.

101. *See e.g., Varnish*, No. 2021CV16.

102. Waneka, "Redden v. Clear Creek, Waiving Goodbye to Liability for Lift-Related Injuries," *Trial Talk* 37–40, Colo. Trial Law. Ass'n (Jan.–Mar. 2021). Waneka was counsel for Ms. Redden. Folker, "Attorneys Say Appellate Decision Lets Ski Resorts Sidestep Responsibilities," *L. Wk. Colo.* 12 (Jan. 11, 2021).

103. *Espinoza v. Ark. Valley Adventures, LLC*, 809 F.3d 1150, 1156 (10th Cir. 2016).