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RECENT CASES: NEGLIGENCE

December 2008, Volume 51, No. 10

Speeding skier collides with another: Risk enhancement: Brain injuries: Hemiplegia: Facial fractures: Structured settlement.

Kotun v. Howe, Utah, Salt Lake Co. 3d Jud. Dist., No. 070907467, May 28, 2008.

Kotun, 28, was an experienced recreational skier. As he was skiing along a lower catwalk across the bottom of a resort slope, Howe, a 16-year-old off-duty ski instructor, was descending the slope. Despite large "Slow" signs posted near Kotun and Kotun waiving his arms and shouting at Howe to stop, Howe took a jump off a terrain change and collided with Kotun while allegedly going approximately 42 m.p.h. Kotun was knocked out of his skis and thrown into a tree 30 feet away. Although he was wearing a helmet, Kotun suffered an intracerebral and frontal lobe hemorrhage and a severe shear injury. He also sustained facial fractures. He now suffers from hemiplegia on his left side and has significant cognitive and speech impediments.

Kotun's past medical expenses were \$131,000, and his future life-care plan is estimated at about \$2.35 million. He had been an office equipment salesperson earning about \$28,000 annually and a volunteer high school football coach but is now permanently disabled. Kotun's past lost income and benefits were \$50,400, and he expects to incur about \$1.4 million in future lost income and benefits.

Kotun's mother, as his guardian, sued Howe's father, as his guardian, alleging Howe's speeding in a slow zone and failure to pay attention to people in the catwalk constituted an enhancement of the risk inherent in skiing.

Defendant contended Kotun was contributorily negligent in not looking uphill and avoiding Howe. Defendant further argued Kotun assumed the risk inherent in skiing.

The parties settled before trial for defendant's policy limit of \$1.5 million, 50 percent of which has been placed in a lifetime annuity paying a monthly amount and increasing annually.

Plaintiff's experts were Stan Gale, ski safety, Golden, Colo.; Patrick Kelley, engineering and accident reconstruction, Lake City, Colo.; Pat Pacey, economics, Boulder, Colo.; Doris Shriver, rehabilitation, Denver, Colo.; and Erin Bigler, neuropsychology, Provo, Utah.

Plaintiff's Counsel
 James H. Chalot, Denver, Colo.
 Craig Adamson, Salt Lake City, Utah
 Craig Hoggan, Salt Lake City, Utah

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