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Workers' Comp Terrain Hardens for Ski Resorts

With safety, prevention and lower liabilities in mind, ski resorts develop a style of their own as insurance carriers report an increase in claims severity from terrain parks even as general liability claims against ski resorts decline.

By Cyril Tuohy

In ski industry lingo, there's a reference to style to reflect the way skiers make it up, down or around the mountain.

There's downhill or "alpine" skiing in which skiers ride up mechanical lifts and ski down to the bottom on slopes of various types of terrain. Another style, one practiced by aficionados of Telemark, has skiers ski down the mountain with their heels unattached to their bindings. These skiers are sometimes called "free-heelers."

Cross-country skiing involves skiing over much flatter terrain. Then there's backcountry skiing, where skiers seek untracked powder above the tree line and away from the crowds, lifts and busy lodges.

Freestyle skiing is a type of skiing where skiers do acrobatic tricks on their skis or snowboard, and often jump high in the air and twist and turn. There's even what's known as "adaptive skiing," which accommodates skiers with disabilities to participate in alpine skiing by using special equipment.

Resorts themselves, it turns out, have their own terminology. It's called Smart Style. It refers to a code of proper conduct in terrain parks -- a part of the resort containing jumps and half-pipes -- which have popped up in nearly every resort since the late 1990s as resorts fight to keep skiers and snowboarders on the slopes and broaden their customer bases.

The Smart Style campaign, developed by the snowboard manufacturer Burton and the National Ski Areas Association, was developed in 2004 as a safety and prevention framework governing terrain parks. Terrain parks have seen severity losses go up, even as terrain park claims frequencies have remained stable, and as general liability claims against ski resorts have gone down.

ASTM International, an engineering standards organization, is reviewing whether to adopt regulations governing tabletop jumping features in terrain parks, said Dave Byrd, director of risk and regulatory affairs for NSAA.

Mitch Schmidt, senior vice president of ACE Custom Casualty, one of the big ski resort underwriters, said terrain parks "add another layer of severity," to the underwriting of the resorts' general liability policies.

"Terrain park operations have seen a rapid ascent and are now a central part of the activities on a resort," said Rob Andrews, director of the ski resort practice with Aon Risks Solutions. "They are top of mind when it comes to ongoing risk management."

Top of mind among ski resort risk, safety and prevention managers, no doubt, was the "seminal development," Andrews said, of *Salvini vs. Ski Lifts Inc.*, in which a jury delivered \$14 million in damages to Kenny Salvini.

Salvini, a snowboarder who in 2004 severed his spine after a jump in the terrain park at the Summit at Snoqualmie, a popular Washington-state ski area, was left paralyzed from the neck down at age 23.

Nine days after Salvini's Feb. 11 accident, Snoqualmie ski instructor, 19-year-old Peter Melrose, died at the foot of a different jump in the same ski area, according to the report in the Seattle Post-Intelligencer.

While the jury concluded that the jump Salvini used should have been taken down, a group representing ski areas described the 2008 Salvini verdict as a "runaway jury verdict," leading some enthusiasts to bemoan the end of terrain parks.

Salvini's lawyer, Jack Connelly, who argued that that several skiers had been injured on the same jump before Salvini's accident, said the verdict should teach ski areas a lesson in safety, prevention and terrain-park design, according to a separate report in the Seattle Times.

Mike Cellura, vice president for the West Coast region of ACE Custom Casualty, said there is a "need for insurers to evaluate the exposures presented by terrain parks."

A total of 38 people nationwide were killed skiing or snowboarding in the 2009-2010 season, which represents a fatality rate of 3.8 people per million participants, according to statistics compiled by the National Ski Areas Association.

By comparison, in 2008, 900 people died while riding bicycles, 129 died from tornadoes, and 25 died from lightning, the NSAA noted.

Resorts Grapple with Workers' Comp Increases

Terrain parks are among a handful of new activities offered by ski resorts as they look to attract more families. Tubing is another. "Sometimes, the tubing takes place at offsite locations, or part of the ski hill has been carved out to accommodate tubing," Andrews said. "It's no different than terrain park operations. It requires a loss control assessment and risk management."

Tubing losses, he said, remain "fairly normal," but it's the workers' comp losses that are driving up insurance costs for ski resorts as they hire more workers, expand their lodges, and extend their mountain activities into the summer. "A six or seven month exposure is now a 12-month exposure," said Cellura.

Christopher Wocell, a Norwalk, Conn.-based ski liability broker with Arthur J. Gallagher & Co., said he has noticed workers' comp experience modifications ranging from the high 90s to around 170 for ski resorts. "There are definitely issues with pricing on workers' comp and issues with loss frequencies, mostly related to slip and falls and lacerations," Wocell said.

Federal inspectors are taking a closer look at ski resorts in the wake of a 2009 federal Government Accountability Office report urging OSHA to require better documentation of injury rates at "high hazard" businesses such as ski areas.

In April, OSHA concluded that the Wolf Creek ski area in Colorado had committed three alleged "serious" violations in the death of ski-patrol director Scott Kay in November 2010.

Kay, working alone and without a helmet, was in the midst of avalanche mitigation work when he died. A third allegation involved an employee staircase without a handrail, according to a report in the Denver Post.

"OSHA has really got the ski industry on its radar screen, and they have since 2009," said Byrd. He also said that a "couple of high profile fatalities," have caused OSHA to ramp up inspections over the past two years at ski resorts around the country.

On January 6, 2010, a skier working on avalanche patrol in Jackson Hole, Wyo., was buried in six feet of snow while setting charges to release the build-up of snow to avoid an unplanned avalanche. A wall of snow buried him, and he died of asphyxia, according to an OSHA report.

In March, 2009, a ski patroller working in Squaw Valley, Calif., died from injuries suffered in an avalanche that dragged him more than 300 vertical feet down the mountain. The avalanche was set off by explosives he placed on the mountain by a coworker.

Andrews said that the "heightened scrutiny by OSHA on the hospitality industry has added further impetus" for resorts to make sure they are in compliance to protect their employees and resort guests. The Obama administration has requested \$583 million in 2012, up from \$513 in 2009.

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