

## **SUMMARY STATEMENT**

*Milus v. Sun Valley Company*

Docket No. 49693-2022

The Idaho Supreme Court agreed to rehear this case following the issuance of its opinion in December 2023. This case concerns the interpretation of the Responsibilities and Liabilities of Skiers and Ski Area Operators Act (“Ski Area Liability Act” or “Act”). Laura Milus, on behalf of herself and her minor son, D.L.J., brought a wrongful death action against Sun Valley Company after her husband died following his collision with a snow gun while skiing at the Sun Valley Ski Resort. Sun Valley moved for summary judgment on Milus’ claims. The district court granted the motion, holding that Sun Valley fulfilled its duty under Idaho Code section 6-1103(2) to mark snowmaking equipment by surrounding the snow gun in yellow padding. Next, the district court held that Sun Valley did not have any duty under Idaho Code section 6-1103(6) to place a notice at the top of the trail where Mr. Milus struck the snowmaking equipment because the snowmaking equipment was not actively discharging snow. Milus appealed the district court’s decision, arguing that the district court misinterpreted the language of section 6-1103(2) and (6) and incorrectly ruled on questions of fact that should have been reserved for a jury.

In its December 2023 opinion, the Idaho Supreme Court reversed the grant of summary judgment and remanded for further proceedings. The Court held that ski area operators are held to an ordinarily prudent person standard of care when undertaking the duties enumerated in Idaho Code section 6-1103(1) through (9) and that whether the yellow padding surrounding the snow gun constitutes a “warning implement” under Idaho Code section 6-1103(2) is a question of fact for the jury. Next, the Court held that Idaho Code section 6-1103(6) imposes a duty on ski area operators to place a conspicuous notice at or near the top of the trail or slope when snowmaking equipment is placed on the ski run or slope, not only when the snowmaking equipment is actively discharging snow, and that there was a genuine issue of material fact whether Sun Valley complied with that duty. Lastly, the Court held that there was a genuine issue of material fact whether Sun Valley may avail itself of the assumption of the risk defense provided in Idaho Code section 6-1106.

Sun Valley filed a Petition for Rehearing, arguing that the Court erred in (1) imposing a standard of care with respect to the duties enumerated in section 6-1103(1) through (9); (2) determining that there was a question of fact concerning whether the yellow padding surrounding the snow gun constituted a warning implement; (3) determining that there was a genuine issue of material fact as to whether Sun Valley placed a conspicuous notice at or near the top of the ski run; and (4) its interpretation and application of section 6-1106. The Court granted Sun Valley’s Petition for Rehearing.

On rehearing, the Court affirmed the district court’s grant of summary judgment in favor of Sun Valley. The Court again held that ski area operators are held to an ordinarily prudent person standard of care when undertaking the duties enumerated in the Ski Area Liability Act. However, the Court held that Milus failed to create a genuine issue of material fact that Sun Valley failed to meet an ordinarily prudent person standard of care when it marked the snowmaking equipment with yellow padding. Therefore, the Court affirmed the grant of summary judgment in respect to Sun Valley’s duty under section 6-1103(2).

Next, the Court again held that the district court erred when it dismissed Milus' claim under section 6-1103(6) because the statute required a notice be posted in this instance and Milus established a genuine issue of material fact concerning whether the required notice was posted at or near the top of the run in question. However, the Court affirmed the district court's decision dismissing Milus' claim on an alternative basis not addressed by the district court: that Milus' claim is barred by section 6-1106 because Mr. Milus assumed the risk of injury resulting from snowmaking equipment that was "plainly visible or plainly marked in accordance with the provisions of section 6-1103, Idaho Code." The Court concluded that the record established that the snow gun was plainly marked in accordance with section 6-1103 and therefore Mr. Milus assumed the risk of injury caused by that equipment. Thus, the Court affirmed the district court's grant of summary judgment and the dismissal of Milus' claims.

\*\*\*This summary constitutes no part of the opinion of the Court, but has been prepared by court staff for the convenience of the public.\*\*\*