Article published Aug 16, 2006

Injured Rollinsford skier challenges law

CONCORD — A Rollinsford man is challenging a state law that bars skiers from suing ski resorts for injuries because of the inherent risks of the sport.

The Supreme Court is scheduled to hear oral arguments in the case on Sept. 21.

Thomas A. Methvin of 126 Oak St. stated he was making his first run while night-skiing on the Red Hat trail at Gunstock Recreation Area in Gilford in February 2004 when he lost his balance as a result of icy conditions. He regained his balance and was about to stand up when he saw a yellow, padded light pole ahead of him. He managed to miss hitting the pole but struck an attached electrical disconnect box.

Methvin argues that, while the pole was an inherent risk, the junction box jutting from it was not. The gray metal box, at skier height, essentially scalped Methvin as he struck it, causing him to suffer traumatic brain and spinal cord injuries.

The injured skier initially sued both Gunstock and Belknap County which owns the recreation area, but Superior Court Judge Harold Perkins dismissed the claims, ruling they were barred by law.

The plaintiff had charged negligent installation of the electrical box, common law negligence, negligent performances of duties voluntarily undertaken and a violation of New Hampshire's Consumer Protection Act. He also requested enhanced monetary damages, maintaining he is totally disabled and unable to work as a result of the accident.

Methvin has since agreed to drop the county from the suit, but has appealed the case against Gunstock to the New Hampshire Supreme Court.

Gunstock's lawyers argue the suit should be dismissed, citing as a precedent a 2001 case in which the state Supreme Court dismissed the claims of a skier who struck a light pole, ruling the pole was a type of obstruction that a skier can expect on a ski trail and, therefore, is an inherent risk of skiing.

The primary issue Methvin's lawyer, Peter Hutchins of Manchester, disputes is whether his client's accident was due to an inherent risk of skiing.

Gunstock argues the issue is settled in New Hampshire law and that the ski area had no duty to protect against such risks.

"In the end, regardless of how plaintiff attempts to frame the issue, plaintiff's injuries resulted from both an implied inherent risk (collision with a light pole) and an express inherent risk (icy conditions)," wrote Attorney Thomas Quarles Jr. of Devine, Millimet & Branch P.A. of Manchester which is representing Gunstock.

The Supreme Court has not decided whether the doctrine of voluntarily assumed duty applies in the face of the state law providing protection to ski area operators. To allow the plaintiff to bring a claim for voluntarily assuming a duty, Quarles argues, would discourage ski areas from ever taking measures to increase safety beyond that required by statute — such as padding its light poles or lift towers — for fear of exposing themselves to liability.

In his ruling on the issue, Judge Perkins wrote, "Additionally it strikes the court as ill-advised public policy to impose liability for attempts to make a ski area safer when no liability would exist if such attempts had not been made."

Oral arguments in the case before three justices of the Supreme Court are among those scheduled to be heard on Sept. 21 beginning at 9:30 a.m. in Concord.