

Lawsuits stemming from inbound avalanches on the rise

By Devon O'Neil, ESPN.com

On Jan. 22, 2012, Christopher Norris, a 28-year-old father of two, went skiing with his father-in-law at Winter Park Resort in Colorado. The two separated during the day, planning to meet at the car for lunch and then resume skiing together. But Norris never showed.

After the lifts closed, Norris' father-in-law reported him missing. Searchers working with headlamps found his body buried under two feet of avalanche debris later that night.

A subsequent investigation by the Colorado Avalanche Information Center (CAIC) confirmed the avalanche – by all accounts a fluke slide, running approximately 30 vertical feet off a small rock outcropping – was likely triggered from below while Norris was skiing in gladed terrain that was open to the public. The fact that the accident occurred during a time of high avalanche danger in the backcountry seemed innocuous, since the slide released inside the ski-area boundary.

Four months after the accident, Norris' family filed a wrongful-death lawsuit against Winter Park. Among other claims, the suit alleges his death could have been prevented if Winter Park employees had properly safeguarded the run or closed it altogether, especially given the dangerous conditions in local backcountry terrain.

“To me it's pretty simple,” says Michael Burg, a Denver attorney who is representing Norris' family. “It's their job to know if there's a potential avalanche that could affect any of their runs. And they were on notice” due to the volatile

local snowpack. A Winter Park spokesperson declined to comment.

Winter Park is not the only major resort currently facing a lawsuit in the wake of a deadly inbounds slide. Two others – The Canyons in Utah and Jackson Hole in Wyoming – are fighting similar suits resulting from fatal accidents on open slopes in 2007 and 2008, respectively.

Vail Resorts also is being sued for the avalanche death of a 13-year-old boy named Taft Conlin, who was killed on a closed run at Vail last winter. That slide occurred the same day as the deadly Winter Park slide, and there is significant dispute between Vail Resorts and the boy's family as to whether the run had been sufficiently roped off.

The individual case details are unique, and each suit is in a different stage of the legal process. But together, they raise questions about the structure of the system and what ripple effects might follow a potentially precedent-setting outcome should one of the plaintiffs win. Not one of 15 people interviewed for this story, including experts who have been studying avalanches for 30 years, could recall that happening before.

Suing a ski area after an accident is, of course, nothing new – tens of cases are filed in this country each year. The practice is more prevalent in the U.S. than in Europe, where there is limited liability at ski areas.

Although people continue to injure themselves on exposed rocks and stumps, inbounds avalanche deaths – skiers or snowboarders who die in open, patrolled terrain, with no extenuating circumstances – have spiked in recent years. They're still rare, but since 2005, inbounds slides have killed people in Nevada, California, Colorado, Utah, Idaho and Wyoming, totaling eight fatalities at some of the most famous resorts in America. That amounts to 24 percent of all inbounds

avalanche deaths since 1950, according to records maintained by the CAIC – or double what the average would suggest over the same seven-year period. (In the 20 years before 2005, only three people died in inbounds slides.)

“We use explosives, ski cut the snow, pay close attention to the weather factors and monitor changes in the snowpack, but it’s not an exact science,” says Will Paden, a veteran ski patroller and avalanche expert at Squaw Valley, where a 21-year-old local man died in an inbounds slide on Christmas Day in 2008. “It requires intuition and years of training to get a feel for what Mother Nature is doing.”

Grant Gunderson If the avalanche danger is high, the safest place to be is at a controlled ski area. But even that is not foolproof.

The U.S. Forest Service leases land to most of the ski resorts in question, and as such, employs a cadre of snow rangers who approve each resort’s avalanche mitigation plan annually. Ken Kowynia, the Forest Service’s winter sports program manager for the Rocky Mountain region, doesn’t believe the recent wave of inbounds deaths represents a failure of the system. (The Forest Service is rarely sued despite its direct oversight of resorts.) “When you’re in a high-danger avalanche cycle, the safest place to be is inside a ski area,” Kowynia says. “But the fact is, these plans are not absolute.”

Some victims’ families abide by the same principle – not everyone sues. After David Conway, 53, was killed by a wet slab that ripped out of a mogul run at Colorado’s Arapahoe Basin in May 2005, the ski area renamed the run in his honor; his family declined to litigate. When 28-year-old Heather Gross died in a Snowbird, Utah, avalanche triggered by someone above her in December 2008, it happened on the first day the terrain had been open all season. An estimated 300 people had descended through the starting zone before it fractured. Later, her father was quoted as saying, “My wife and I don’t

see Snowbird at fault unless there's something egregious I'm not aware of, but I don't see them at fault."

The perceived fault line can be paper-thin. Thirteen days after Gross' death, on Dec. 27, 2008, David Nodine, 31, died in an avalanche under similar circumstances at Jackson Hole. The run that fractured had been opened that morning for the first time all season, in the midst of the busiest week of the year. Resort ski patrol had conducted avalanche control on the run seven of the nine days leading up to Nodine's death, including that morning. Numerous visitors had ridden over the fracture site without incident. To the casual observer, it seemed a simple freak of nature, nothing more.

But in the hours before Nodine died, two other inbounds avalanches caught and carried people in the same general area where his slide released. Both slides were reported to ski patrol – including one that buried a snowboarder leaving only his arm free – but according to sworn evidence filed in court and supplied to ESPN by Nodine's family's lawyers, the patrol declined to close the area, maintaining that the terrain was safe.

Nodine's slide, less than an hour after the second reported avalanche, was witnessed by two patrollers and a local ski guide. They located Nodine under 7 feet of snow within two minutes and uncovered his face within eight, but he never woke up. He left a wife and unborn child.

Nodine's lawyers argue that Jackson Hole Mountain Resort's decision to open the terrain and then leave it open after the first two slides, despite considerable avalanche risk, amounts to "reckless decisions driven by profit." They allege that the resort's gross negligence – a subjective term that is more egregious than "ordinary" negligence – supersedes the liability-release form Nodine signed when he bought his season pass.

According to a motion to have the case dismissed that was filed by JHMR's defense lawyers, Nodine's liability form read in part: "I agree to release, discharge, waive, save and hold harmless, indemnify and defend JHMR ... from and against any and all claims ... brought under any theory of legal liability, including negligence, arising directly or indirectly out of my use of the ... ski area ... The above release includes, but is not limited to, any and all damages occasioned in the event of ... death ... however caused." Among the inherent risks Nodine acknowledged: "Avalanche."

An overwhelming majority of liability cases settle before going to trial, and that possibility remains. In a phone interview, Nodine family lawyer Andy Payne said his team is seeking "multiple millions" in damages. An attorney representing JHMR declined to comment.

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