SECREST WARDLE

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

07.09.12

Known "Half Pipe" Covered Under SASA

By Timothy Holland

In *Marshall v Boyne USA, Inc*, unpublished, the Michigan Court of Appeals reversed the trial court's refusal to apply the Ski Area Safety Act ("SASA")[1] where a Plaintiff fell in a known hazard while skiing at a Boyne resort. The Court of Appeals granted Defendant's motion on summary disposition and applied SASA to the hazard, eliminating liability. This ruling affirms the strength of SASA in the context of failure to properly warn/plan negligence cases. The clear conclusion is that SASA applies to any obvious or known hazard.

SECREST WARDLE NOTES:

In *Marshall*, the Court affirmed the broad application of SASA to situations involving known hazards and inherent risks to skiers and snowboarders. *Marshall* emphasizes the fact that the hazard was known to Plaintiff from earlier the same day on which he hurt himself. Where the Defendant can prove that the skier or snowboarder knew or should have known, of the hazard, summary disposition under SASA is necessary and appropriate.

Plaintiff was an experienced skier who spent most of the day skiing at a Boyne resort. Earlier in the day, he was skiing in an area called "Terrain Park". Terrain Park had a number of obstacles for skiers and snowboarders to ski over and jump off of, as well as a "half pipe".[2] Plaintiff, despite seeing clearly marked warning signs, skied through Terrain Park. In fact, he passed within several feet of the half pipe and admitted noticing it prior to his accident. After making several other ski runs in the same afternoon, Plaintiff decided to ski through Terrain Park again, this time jumping off of the various obstacles.

Later, Plaintiff jumped off of a Terrain Park obstacle, traveled 12-15 feet in the air, landed upright, slid into the half pipe, and sustained injuries. Plaintiff sued Defendant on the theory that the half pipe was not marked and did not contain proper warnings. Plaintiff claimed that if there had been appropriate signage or warnings then he could have avoided the half pipe. Plaintiff made these claims despite admitting he had seen the half pipe earlier in the day.

Defendant filed a motion to dismiss on two grounds. First, Defendant asserted that falling in the half pipe was a risk inherent in skiing and thus covered by SASA. Second, Plaintiff had signed two liability release waivers.

Defendant likened Plaintiffs' case to *Anderson v Pine Knob Ski Resort, Inc,* 469 Mich 20 (2003). In *Anderson,* a skier skied into a timing shack that had been placed at the bottom of a ski run to house persons who were timing the run. Plaintiff sued under the theory that the placement of the timing shack was negligent, arguing that a skier would not expect to find one in that location. The Court of Appeals ruled that the risk of injuries sustained from skiing into the timing shack were inherent to the sport and covered by SASA.

Defendant argued that the half pipe was similar to the timing shack in *Anderson* and sought dismissal under SASA. Defendant also argued that Plaintiff had injured himself on a known hazard that he had seen earlier that day. The trial court denied Defendant's motion concluding that issues of fact existed for resolution by the jury.

On appeal, the Court of Appeals reversed the trial court and dismissed the case, stating:

> We agree with Defendant that SASA bars Plaintiffs' claim. Under SASA, a skier assumes the risk for those dangers that inhere in the sport of skiing unless those dangers are unnecessary or not obvious. Among the risks assumed are "variations in terrain." MCL 408.342(2). Moreover, Defendant did not breach a duty imposed under the Act. MCL 408.326a imposes a duty on the ski resort to mark certain hazards involving equipment and fixtures, which is not relevant here, as well as a duty to place a sign at the top of a run, slope or trail with certain information regarding the difficulty of that run, slope or trail. There is no dispute that Defendant complied with this requirement. Rather, Plaintiffs argue that Defendant breached a duty not imposed by the statute: to mark the half pipe itself. But *Anderson* makes clear that when SASA resolves a matter, common-law principles are no longer a consideration. By choosing to ski in the terrain park, which was marked with signage as required by the SASA, and which contained the half pipe that Plaintiff saw earlier that day, Plaintiff is held to have accepted the danger as a matter of law.

Marshall at 1 [citations omitted].

---

[1] SASA shields ski area possessors from liability from known hazards or injuries that are inherent in the activities of skiing or snowboarding.

[2] This is an area dug out to form a half circle for persons to gain momentum then perform repeated tricks and jumps off the top of the half pipe, always landing back in the half pipe.

CONTACT US

Farmington Hills
2600 Troy Center Drive, P.O. Box 5025
Troy, MI 48007-5025
Tel: 248-851-9500 Fax: 248-851-2158

Mt. Clemens
94 Macomb Place, Mt. Clemens, MI 48043-5651
Tel: 586-465-7180 Fax: 586-465-0673

Lansing
6639 Centurion Drive, Ste. 130, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids
2025 East Beltline SE, Ste. 209, Grand Rapids, MI 49546
Tel: 616-285-0143 Fax: 616-285-0145

www.secrestwardle.com

SECREST SW WARDLE

CONTRIBUTORS

Premises Liability Practice Group Chair
Mark F. Masters

Premises Liability Practice Group Co-Chair
Caroline Grech-Clapper

Editor
Bonny Craft

We welcome your questions and comments.

OTHER MATERIALS

If you would like to be on the distribution list for Boundaries, or for newsletters pertaining to any of our other practice groups, please contact Secrest Wardle Marketing at **swsubscriptions@secrestwardle.com** or **248-539-2850**.

Other newsletters include:

Benchmarks – Navigating the hazards of legal malpractice
Blueprints – Mapping legal solutions for the construction industry
Community Watch – Breaking developments in governmental litigation
Contingencies – A guide for dealing with catastrophic property loss
Fair Use – Protecting ideas in a competitive world
In the Margin – Charting legal trends affecting businesses
Industry Line – Managing the hazards of environmental toxic tort litigation
Landowner's Alert – Defense strategies for property owners and managers
No-Fault Newsline – A road map for motor vehicle insurers and owners
On the Beat – Responding to litigation affecting law enforcement
On the Job – Tracking developments in employment law
Safeguards – Helping insurers protect their clients
Standards – A guide to avoiding risks for professionals
State of the Art – Exploring the changing face of product liability
Structures – A framework for defending architects and engineers
Vital Signs – Diagnosing the changing state of medical malpractice and nursing home liability