

Liability Considerations for a Ski Area in Hosting International Events

Almost without exception any ski area would welcome the prestige and promotional value of hosting an international event. Ski areas such as Kitzbuhel, Val d'Isere, Val Gardena and Vail are known throughout the world largely as a result of hosting World Cup Alpine Ski events over the years. The hosting of such an event brings the world to your doorstep largely as a result of the accompanying television coverage as well as the press reporting leading up to the event and the ultimate results. Should the ski conditions and weather be favourable together with television coverage the promotional benefits could be enormous.

The International Ski Federation (FIS) has many member disciplines which are always looking for new venues to hold their events. From the speed and glamour of the Downhill to the acrobatic maneuvers of Freestyle Aerials and all the exciting events in between, hosting a FIS event at any level has both many benefits as well as challenges.

The planning and organizing of personnel, budgets, course preparation, accommodations, transportation, scheduling, advertising, sponsorship, television and numerous other components must be considered in order to host such an event. One very important consideration and the focus of this paper are the liability considerations when hosting such an international event.

These considerations largely involve the risks undertaken by the athletes that compete in the various FIS disciplines. Alpine racing takes place on steep icy terrain where the goal is to go as fast as possible. Freestyle Aerials involves athletes jumping 15 meters into the air and performing numerous flips and twists before coming back to earth. The relatively new discipline of Snowboarding combines all of these risks while the athlete has both feet fixed to a single piece of equipment. The fact is that inevitably competitors in these events will and do get injured. Fortunately most injuries are minor but occasionally the injuries can be very serious and can sometimes result in death.

So what is a ski area to do in order to obtain the benefits of hosting such an inherently dangerous event and at the same time protect them from liability? The following is a list for methods by which the liability concerns can and should be addressed:

- i) Liability insurance coverage held by the ski area itself;
- ii) The Event Organizers Agreement with FIS;
- iii) The FIS Athlete's Declaration;
- iv) The Competition Jury; and
- v) The FIS Competition Rules

i) Liability Insurance Coverage

A primary consideration will be the extent of coverage and applicability of any liability insurance policy held by the ski area itself. Almost invariably such policies contain exclusions for certain activities and are not covered. The policy itself should be reviewed carefully to determine if any of the activities contemplated by the event are excluded from coverage. Speed events such as downhill racing may be excluded. As well, inverted aerial maneuvers found in Freestyle Skiing and Snowboard events may not be covered. A thorough review of the policy with your insurance provider or broker would be recommended with specific reference to the nature of international event you are contemplating.

ii) FIS Event Agreement for Alpine Events

The International Ski Federation will require an event organizer of a World Cup Alpine Event to complete and execute a lengthy and detailed agreement. The agreement also contemplates that the National Ski Association (NSA) of the country in which the event is held also be a party to it.

The liability issues that are addressed in this agreement are as follows:

- (a) The organizer is responsible to secure the competition course in accordance with the prevailing standards for the event concerned. Any safety measures requested by the Jury and/or the FIS Race Director must be implemented.
- (b) Access to the competition courses is to be restricted and policed.
- (c) The criteria for all safety equipment must be adhered to.
- (d) The Organizer must have in place insurance contracts providing full coverage of its civil liability in connection with the organizing and staging of the Competition. This insurance coverage must extend to all personnel including members of the Jury. The minimum coverage per occurrence is CHF 3,000,000. A copy of the insurance contract must be submitted to the FIS Technical Delegate for the event.
- (e) The Organizer must provide indemnification to FIS from any and all liabilities associated with the event.

Suffice it to say that despite the involvement of FIS, the intent is that any and all liability issues continue to remain with the Organizer.

iii) The FIS Athlete's Declaration

A prerequisite to obtaining a FIS license in order to compete in FIS sanctioned events is for the athlete to sign and submit an Athlete's Declaration in the appropriate form. The form of this declaration can be obtained from the FIS website under Forms and Publications. The fact is that the declaration is a thinly disguised liability waiver form that attempts to protect both FIS and the Event Organizers from liability should the

athlete be injured or be killed during a FIS sanctioned event. The document contains an acknowledgment of risks, an acknowledgement of personal liability as well as a release.

Due largely to the sheer number of FIS licensed athletes the actual signed form is to be retained by the athletes NSA. If a situation presents itself where the actual signed document must be obtained, that is where it will be found.

If the athlete be under the age of 18 the declaration must also be signed by a parent or guardian.

There have been many concerns expressed about the validity and protection which the Athlete's Declaration in fact provides. In 2000, the National Consumers Association in Italy petitioned the court in Rome to declare the Athlete's Declaration to be unconscionable according to the applicable civil code. An appeal decision rendered in 2004 did just that due to specific wording of the declaration. That decision as well as some other concerns from the United States caused the FIS Legal and Safety Committee to review the form of the declaration. As a result, the declaration has been amended into its present form. The form can be downloaded in several languages from the FIS website.

Several legal opinions across Europe as well as in North America have come to the conclusion that, while not perfect, the declaration affords some measure of protection but does not protect against gross negligence on the part of either the FIS or the Event Organizer. Additionally, some organizers in North America still require an additional waiver document to be signed by all participants in the event.

iv) The Competition Jury

The FIS Competition Jury is required to make decisions concerning course safety and weather conditions that impact upon the event. To the extent that these decisions are made incorrectly or negligently, liability may accrue to the members of the Jury and not upon the Event Organizer or Ski Area. If that is the case FIS has in place its own liability

insurance coverage which should apply. While operating as a Competition Jury at a FIS event, the members are in essence representatives of FIS. When on the rare occasion a civil suit is instituted arising from an injury that occurs at a FIS sanctioned event the individual members of the jury are sometimes named as individual defendants together with FIS.

v) The FIS Competition Rules

The FIS Competition Rules provide a comprehensive discipline specific set of guidelines and directions with respect to the running of an event. While following these rules do not guarantee the avoiding of liability, the failure to do so could have a significant effect on liability. These rules provide everything from course specifications to training requirements as well as specific safety requirements.

The FIS Competition Rules require all participants to have signed the Athlete's Declaration. Further pursuant to Article 212 of the Rules, specific insurance requirements are set out for Event Organizers, National Ski Associations, Athletes and FIS.

As indicated the FIS Competition Rules are discipline specific and may be accessed from the FIS website.

Other Considerations

While this paper has focused on liability issues directed at the athlete or competitor, consideration must also be given to potential liability claims by course workers, officials, spectators and the general public. There exists a duty of care to protect those individuals as well. The difficulty of course is that the organizer may have less control over the actions of these individuals.

Further, no amount of effort will protect the ski area from the negligence of its staff. The ski area must remain ever vigilant of its risk management procedures.

Also, keep in mind that the involvement of FIS only applies to FIS sanctioned competitions. Any non sanctioned event or the use of the ski area for training purposes unrelated to a specific competition leaves the area to its own devices. It is entirely possible that although the activity involves FIS licensed athletes the waiver of liability aspect of the Athletes Declaration may not apply.

Some Examples

Every year literally thousands of FIS sanctioned ski events take place throughout the world. As well, the training of FIS athletes takes place continuously. Despite the sheer numbers and the element of risk inherent to these activities, there has been few liability claims arising out of the hosting of ski events and training.

The following is a brief synopsis of three actual claims that have arisen at FIS sanctioned ski events.

i) Kitzbuhel

Brian Stemmler of Canada was severely injured while racing the World Cup Downhill at Kitzbuhel, Austria in 1989. Although he later returned to a very successful racing career and came close to winning an Olympic medal in the event he successfully sued the race organizing committee. He was successful in his allegations of negligence against the organizer, in two successive Appeal Court decisions in Austria and obtained a substantial sum for damages. Of note, the facts of this case were that the race organizers ignored pre race warnings of inadequate safety preparations in the exact location of Stemmler's fall.

ii) Deer Valley

In 1996 a Judges stand erected for the purposes of judging a FIS sanctioned Freestyle Mogul event in Deer Valley, Utah was knocked over by the wind injuring a number of judges that were located on the stand. Although litigation was commenced by a number of the injured parties as against the ski area as well as the USSA all claims were settled upon terms that remain confidential. This case illustrates the need to extend safety considerations beyond the scope of the competitors.

iii) Jiminy Peak Mountain Resort

As a result of a fall in a FIS sanctioned university race in the state of Massachusetts in the United States held in 2006, a competitor by the name of Kelly Brush has commenced an action as against a number of Defendants including the ski area, the FIS Technical Delegate, several coaches and two universities. Although the fall was as a result of skier error she struck a metal post associated with the ski lift resulting in T-6 paraplegia. It will be interesting to see if the Athlete's Declaration which, had to have been signed by the Plaintiff, will be put forward successfully as a defense.

Although there are several other examples, fortunately negligence claims of this nature are few and far between.

Conclusion

The hosting of any kind of a ski event at a ski area will most certainly attract liability considerations. To the extent that the International Ski Federation is involved, it

can be seen that the issue of liability for injury in so far as the athletes and the officials are concerned has been seriously considered and systems have been put in place in an effort to limit the potential exposure. This has been done in order to provide some comfort to ski areas wishing to host these events and to create an environment of safe events without sacrificing the excitement of the sport.

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