

DISTRICT COURT, BROOMFIELD COUNTY, COLORADO 17 Desombes Dr. Broomfield, CO 80020	DATE FILED: December 16, 2022 12:32 PM FILING ID: 164A2846C7EF7 CASE NUMBER: 2022CV30333 <p style="text-align: center;">▲ Court Use Only ▲</p>
Plaintiffs: MICHAEL D. MILLER, as Parent and Guardian of ANNALEA JANE MILLER v. Defendant: VAIL RESORTS, INC, d/b/a CRESTED BUTTE MOUNTAIN RESORT, LLC	
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COMPLAINT AND JURY DEMAND	

Plaintiff MICHAEL D. MILLER, as Parent and Guardian of ANNALEA JANE MILLER, his minor child, in his individual capacity, by and through his attorneys of

record, LEVENTHAL PUGA BRALEY P.C. and 222 INJURY LAWYERS, PLLC for his Complaint and Jury Demand against Defendant VAIL RESORTS, INC, d/b/a CRESTED BUTTE MOUNTAIN RESORT, LLC, states as follows:

Parties and Jurisdiction

1. Plaintiff Michael (“Mike”) Miller is the father of Annalea (“Annie”) Miller, a minor.
2. Annie Miller was born on April 16, 2005.
3. Any person who is a minor under 18 years of age is considered a “person under disability” pursuant to Colorado law. C.R.S. § 13-80-101(3).
4. Under C.R.S. § 13-80-103(1)(a), if at any time after a right of action has accrued, and “prior to the termination of such disability,” a legal representative (including a guardian) is appointed for such person under disability, then such legal representative/guardian “shall be allowed not less than two years after his appointment within which to take action” on behalf of the person under disability. This is so “even though the two-year period expires after the expiration of the period fixed by the applicable statute of limitations.” *Id.*
5. Plaintiffs Mike and Annie Miller are citizens of and residents of the State of Oklahoma.
6. Under Colorado law, Plaintiff Mike Miller is entitled to recover for his minor child’s pre-majority medical expenses and other pre-majority economic damages.
7. Defendant Crested Butte Mountain Resort (“Crested Butte”) is a ski resort located in Crested Butte, Gunnison County, Colorado.
8. Crested Butte is a Limited Liability Company that was organized under the laws of the State of Colorado.
9. In 2018, Vail Resorts, Inc. (“Vail Resorts”) acquired Crested Butte.

10. Defendant Vail Resorts, Inc. is a corporation that was organized under the laws of the State of Colorado and was formed in January 1997.

11. Vail Resorts owns and operates forty-one ski resorts in the United States, Canada, Australia, and Switzerland.

12. Vail Resorts is a citizen of the State of Colorado, with its headquarters and principal place of business in Broomfield, Colorado.

13. At all material times, Vail Resorts d/b/a Crested Butte was incorporated and headquartered in the State of Colorado.

14. This court has personal jurisdiction and subject matter jurisdiction over this action pursuant to C.R.S. § 13-1-124(1)(a), (b), and (c).

15. Venue is proper pursuant to C.R.C.P. 98(c).

General Allegations

16. As part of a church trip, Mike Miller purchased 3-day Epic passes for himself and his daughter, Annie, in November 2021.

17. On March 16, 2022, Mike and Annie were skiing at Crested Butte Mountain Resort.

18. Crested Butte is a Colorado Ski Resort that is open to the public for the purpose of skiing, snowboarding, and various other outdoor activities.

19. At all times material to this case, Vail Resorts was the owner of Crested Butte Mountain Resort.

20. At all times material to this case, Vail Resorts was the Ski Area Operator of Crested Butte Mountain Resort and the Paradise Express chairlift.

21. Vail Resorts and Crested Butte are, and at all times material to this case, were the owner and operator and licensee of the Paradise Express chairlift located at Crested Butte.

22. The Paradise Express chairlift is, and at all material times was, a “public tramway” within the meaning of the Colorado Passenger Tramway Safety Act and was subject to regulation by the Colorado Public Tramway Safety Board.

23. The Paradise Express chairlift is a detachable four-person, high-speed chairlift, installed in 1994.

24. The Paradise Express chairlift’s license number is TRM.0CB-015.

25. On March 16, 2022, controls that can be used to slow or stop the Paradise Express chairlift were located at the lower terminal of the Paradise Express chairlift next to the load line.

26. On March 16, 2022, controls that can be used to slow or stop the Paradise Express chairlift were also located within the lower terminal lift control building.

DUTIES OF SKI LIFT OPERATOR

27. Under Colorado law, the primary responsibility for the design, construction, maintenance, operation, and inspection of a ski lift rests with the area operator of the passenger tramway devices. This amounted to a nondelegable duty on the part of Vail Resorts and Crested Butte.

28. Under Colorado law, the standard of care applicable to a ski lift operator for the design, construction, maintenance, operation, and inspection of a ski lift is the **HIGHEST DEGREE OF CARE** commensurate with the practical operation of the ski lift.

29. As the owner and area operator of the Paradise Express chairlift, Vail Resorts and Crested Butte, and their agents, employees, supervisors, managers, owners, and operators owed the highest duty of care to Annie Miller while she was a passenger on the Paradise Express chairlift on March 16, 2022.

30. Vail Resorts and Crested Butte, and their agents, employees, supervisors, managers, owners, and operators were in a special relationship with Annie Miller by virtue of undertaking the risk to provide her with safe passage on the Paradise Express

chairlift on March 16, 2022. This special relationship gave rise to a nondelegable duty to exercise the highest degree of care in providing them safe passage to the top of the Paradise Express chairlift.

31. Under the circumstances of this case, Vail Resorts and Crested Butte had exclusive possession and control of the Paradise Express chairlift, which was used in the conduct of their business.

32. At all times material to this case, the Paradise Express chairlift was operated at considerable height above the ground over rough, elevated, precipitous, snow-packed terrain.

33. At all times material to this case, the Defendant knew or should have known that a fall from the Paradise Express chairlift could be calamitous to the occupant of the ski lift, resulting in serious permanent injury or death.

34. At all times material to this case, the Defendant knew or should have known that passengers on the Paradise Express chairlift, including Annie Miller, entrusted their safety to the operator of the Paradise Express chairlift.

35. At all times material to this case, the Defendant knew or should have known that the operation of a ski lift like the Paradise Express chairlift entailed both greater danger and greater responsibility than circumstances involving ordinary care.

36. At all times material to this case, the Defendant exercised significant control over the safety and well-being of Annie Miller while she was a passenger on the Paradise Express chairlift at Crested Butte.

37. As a passenger on the Paradise Express chairlift, Annie Miller was relatively powerless to secure her own safety under the circumstances.

38. A state of dependence and trust existed at all times material to this case between Annie Miller and Vail Resorts and Crested Butte, as owner and operator of the Paradise Express chairlift.

39. At all times material to this case, Annie Miller had surrendered herself to the care and custody of the Defendant while riding on the Paradise Express chairlift – she had given up her freedom of movement and actions, and there was nothing she could do to cause or prevent the tragedy.

40. The event that severely injured Annie Miller is of the kind that ordinarily does not occur in the absence of negligence.

41. Responsible causes other than the Defendants’ negligence will be sufficiently eliminated by the evidence produced at trial.

42. The presumed negligence is within the scope of the Defendants’ duty to Annie Miller.

43. Under the doctrine of *res ipsa loquitur*, Plaintiffs are entitled to a rebuttable presumption that the Defendant was negligent.

WHAT HAPPENED ON MARCH 16, 2022?

44. On March 15, 2022, Mike Miller and Annie Miller arrived at Redstone Condominiums in Crested Butte, Colorado.

45. Mike Miller and Annie Miller had traveled to Crested Butte, Colorado from their home in Muskogee, Oklahoma with about thirty other people as a part of a church trip.

46. Mike Miller and Annie Miller skied Crested Butte on March 15, 2022.

47. On March 16, 2022, Mike Miller and Annie Miller skied Crested Butte again.

48. At around 3:40 pm, Mike Miller and Annie Miller went to get on the Paradise Express chairlift.

49. Annie was in a loading group with her father, Mike, a man named Jamon Jensen, and Mr. Jensen’s son.

50. As the ski lift chair entered the loading zone, Annie went to sit down on the chairlift bench but was not able to.

51. As Annie was trying to get on the chairlift and keep from falling down, she grabbed the chair, and her father grabbed her.

52. Annie's father, along with Mr. Jensen and people in the lift line, were yelling for someone to "**STOP**" or to slow the lift, but it continued without slowing or stopping.

53. Upon information and belief, there was no lift attendant/operator present at the load line to assist Annie in the loading process or to engage the slow or stop controls during the loading process.

54. The lift continued, although Annie was obviously hanging from the chair. Annie's father continued to scream for someone to **STOP** the lift.

55. As the ski lift chair continued up the mountain, Annie's father continued to try and lift her up into the seat, but he could not.

56. Upon information and belief, the operators of the Paradise Express lift saw what was going on with Annie and that she was not on the lift but consciously and recklessly failed to stop it.

57. At no point between the time when the ski lift chair reached the group in the load line and Mr. Miller's unsuccessful attempt to lift Annie up and secure her in her seat did the lift slow or stop.

58. By not stopping the lift when it was obvious to everyone present that Annie was not seated properly, the operator of the Paradise Express chairlift consciously and recklessly disregarded Annie's safety, knowing that not stopping the lift could result in a fall that could be calamitous to Annie resulting in serious permanent injury or death, knowing that passengers on the Paradise Express chairlift – including Annie – entrusted their safety to the operator of the Paradise Express chairlift, and knowing that the operation of a ski lift like the Paradise Express chairlift entailed

both greater danger and greater responsibility than circumstances involving ordinary care.

59. As the ski lift continued up the mountain, Annie tried to keep hold of the chair, and Mike tried to keep hold of Annie.

60. At some point, neither Annie nor Mike could hold on any longer, and *Annie fell approximately thirty feet to the ground. Annie landed directly on her back.*

61. At no time before Annie fell did a lift attendant/operator stop or slow the lift.

62. Had the lift attendant/operator stopped the lift properly, Annie could have been safely evacuated and her injuries prevented.

63. After Annie fell, Mike pleaded with the lift operator to reverse the lift so that he could get to Annie immediately. That, however, was not possible, and Mike was forced to keep riding the ski lift to the top and then ski down to Annie.

64. By the time Mike arrived at Annie, a group of skiers and medics were around her. The medics placed Annie in a C-collar and a backboard and took her to the Gunnison Valley Health Mountain Clinic at the bottom of the mountain.

65. The Clinic notes state that Annie presented after falling approximately 30 feet from the Paradise Chairlift.

66. It was also noted that Annie did not have any sensation or motor control below her nipple line.

67. Once stable, Annie was emergently transferred to the Gunnison Valley Hospital.

68. At Gunnison Valley Hospital, Annie was taken directly to CT imaging where a CT traumagram showed: 1. Acute up to severe compression fractures of C7 and T3-T5. 2. Severe spinal narrowing at C7 due to osseous fragment retropulsion. 3. Fractures extending to vertebral body corners of C7 and T5 suspicious for ligamentous disruption/instability.

69. The Clinical Impression was: 1. Acute up to severe compression fractures of C7 and T3-T5. 2. Severe spinal narrowing at C7 due to osseous fragment retropulsion. 3. Fractures extending to vertebral body corners of C7 and T5 suspicious for ligamentous disruption/instability. 4. Small adjacent hematomas within the posterior right hepatic lobe most consistent with a grade 2 hepatic injury. 5. Small contusions within the periphery of the left lower lobe and right upper and lower lobes. 6. Acute neurogenic shock. 7. Acute hypoxemic respiratory failure. 8. Acute paralysis of bilateral lower extremities. 9. Acute paresis of bilateral upper extremities.

70. Given the concern for significant C-spine injury with cord impingement, Annie was transferred to Children's Hospital in Denver via ambulance.

71. Annie arrived at Children's Hospital at 1:13 am on March 17, 2022.

72. The admitting physician, Keith Weisz, MD, noted, "Annie is a 16 year old female with injury to C7 level of spinal cord with burst fracture of C7, thoracic disc injuries, pulmonary contusions, and grade II liver lac after fall from ski lift. Evaluation notable for no strength in upper or lower extremities."

73. Annie was admitted to the pediatric intensive care unit.

74. That same day, Annie underwent surgery with Todd Hankinson, MD for an anterior C6/7 and C7-T1 cervical discectomies, anterior C7 cervical corpectomy, and an anterior C6-T1 instrumented fusion.



75. On March 20, 2022, doctors tried to extubate Annie but failed “due to neuromuscular weakness and inadequate secretion clearance.”

76. Over the next month, Annie suffered acute respiratory failure, hypoxia, hypercapnia, pneumonia, constipation, nausea, vomiting, neuromuscular failure, and unbearable pain.

77. With that, Annie underwent a tracheostomy and g-tube placement during her stay.

78. Annie also underwent extensive music therapy, speech therapy, physical therapy, and occupational therapy.

79. Annie remained at Children’s hospital until April 20, 2022, when she was discharged to Craig Rehabilitation Hospital.

80. On discharge, her final diagnoses were: Injury resulting from fall from height, metabolic acidosis, Hx of cervical spine surgery, pain management, gastrostomy

tube in place, hyperphosphatemia, urinary retention, neurogenic bowel, at high risk for deep venous thrombosis, tracheostomy status, acute respiratory failure with hypoxia and hypercapnia, and injury at C7 level of cervical spinal cord.

81. Annie arrived at Craig Rehabilitation Hospital on April 20, 2022, and remained there until June 16, 2022, when she was discharged to outpatient care. Annie's primary diagnosis was "Acute incomplete tetraplegia."

82. Annie's "Problem List" on admission stated:

1. Acute traumatic tetraplegia on 03/17/2022, related to a 30 foot fall off a ski lift. Patient presents as a C8 AIS B incomplete tetraplegia.
2. Orthopedic fractures including a C7 burst fracture and T1-T5 compression fractures.
3. Anterior cervical fusion with C7 corpectomy from C6-T1. She is to be in a CTO brace for 12 weeks when her head of bed is up over 40 degrees.
4. Right acetabular fracture, nondisplaced and nonweightbearing x6 weeks.
5. Grade 2 liver laceration.
6. History of hyperphosphatemia. Will check level on admission.
7. Respiratory failure, admitting with trach that was placed on April 4 and ventilator. Will consult Pulmonary Medicine. She is beginning to wean off the ventilator.
8. Immobility related to spinal cord injury. Continue with DVT prophylaxis of Lovenox 30 mg subcu b.i.d.
9. Neuropathic pain having banding pain at transitional zone. Continue with gabapentin.

83. At discharge, Annie's diagnoses included:

1. Acute incomplete tetraplegia
2. Acute spastic tetraplegia
3. History of fusion of cervical spine
4. Normocytic anemia
5. Hypercalcemia due to immobilization
6. Detrusor overactivity
7. Hyperphosphatemia

8. Hypovitaminosis D
9. Neurogenic bowel
10. Neurogenic bladder
11. Impaired sensation
12. Respiratory failure, acute
13. Tracheostomy present
14. Neurogenic orthostatic hypotension
15. At high risk for autonomic dysreflexia
16. DVT prophylaxis
17. Fracture of right acetabulum
18. Dysphagia

84. After this tragic incident, Plaintiff's counsel requested any investigative materials from Crested Butte. To date, Crested Butte has not provided any documents.

First Claim for Relief
Highest Duty of Care of Ski Lift Operator

85. Plaintiff incorporates all the paragraphs in this Complaint by reference.

86. The Defendant owed Annie Miller the highest duty of care as a Colorado Ski Lift Operator while operating and inspecting the Paradise ski lift at Crested Butte on March 16, 2022. This amounted to a nondelegable duty.

87. The Defendant, through their agents, employees, supervisors, managers, owners, and operators, failed to exercise the highest duty of care by:

- a. Failing to properly operate the Paradise Express chairlift on March 16, 2022;
- b. Failing to properly train lift operators on the safe and proper operation of the Paradise Express chairlift, including emergency stoppage of the lift;

- c. Failing to properly implement and enforce policies and procedures regarding proper operation of the Paradise Express chairlift, including emergency stoppage of the lift;
- d. Failing to have properly trained lift operators present at the Paradise Express chairlift on March 16, 2022;
- e. Failing to stop or slow the Paradise Express chairlift on March 16, 2022 for the Millers.

88. As a direct and proximate result of the negligence of Defendant, Annie Miller has and will suffer past and future economic losses, past and future non-economic losses, past and future disfigurement damages, and past and future physical impairment damages. Annie Miller has suffered significant and permanent injury and dysfunction, physical impairment and disfigurement, emotional distress, mental anguish, and physical suffering. Annie Miller's injuries have been and will continue to be disabling, incapacitating, and humiliating. Annie Miller's injuries are permanent. Annie Miller has suffered a loss of earning capacity for the future. Annie Miller has suffered and will suffer a loss of the ability to enjoy a normal life. These losses further include, but are not limited to, expenses for physicians, hospitalizations, rehabilitation, and related medical care and treatment. Annie Miller has incurred, and will incur in the future, expenses for physicians, medical procedures, medications, hospitalizations, rehabilitation, therapies, educational costs, long term care and assistance, and related medical care and treatment.

Second Claim for Relief
Negligence Per Se/Private Right of Action Under the SSA

89. Plaintiff incorporates all the paragraphs in this Complaint by reference.

90. The Colorado Legislature enacted the Ski Safety Act (“SSA”) in 1979 to define the rights, responsibilities, and liabilities of both skiers and ski area operators. C.R.S. § 33-44-102; Ch. 323, sec. 1, § 33-44-102, 1979 Colo. Sess. Laws 1237, 1237.

80. The Colorado Legislature intended that the SSA controls: “Insofar as any provision of law or statute is inconsistent with the provisions of this article, this article controls.” C.R.S. § 33-44-114.

81. The General Assembly enacted the Passenger Tramway Safety Act (“PTSA”) with the purpose of assisting “in safeguarding life, health, property, and the welfare of this state” in the operation of passenger tramways.” C.R.S. § 25-5-701.

82. Together, the SSA and PTSA establish a framework for negligence actions in the ski and ski lift context by identifying various duties for violations of statutory and regulatory requirements.

83. As intended by the Colorado Legislature, a violation by a ski area operator of any rule or regulation promulgated by the Passenger Tramway Safety Board (“PTSB”) pursuant to the PTSA constitutes negligence and/or negligence *per se*. C.R.S. § 33-44-104(2) (“A violation by a ski area operator of any requirement of this article or any rule or regulation promulgated by the passenger tramway safety board pursuant to section 25-5-704(1)(a), C.R.S., shall, to the extent such violation causes injury to any person or damage to property, constitute negligence on the part of such operator.”).

84. The PTSA not only defines duties of operators of a tramway, it also empowers the PTSB with rulemaking authority to carry out its functions. C.R.S. § 25-5-704. Acting pursuant to this authority, the PTSB has promulgated Rules as well as adopted the standards utilized by the American National Standards Institute (“ANSI”), which are contained in the “American National Standard for Passenger Ropeways – Aerial Tramways and Aerial Lifts, Surface Lifts, Tows, and Conveyors – Safety Requirements” ANSI B77. 3 Colo. Code Regs. § 718-1:0.1.

85. At all times material to this case, the Defendant was in violation of one or more PTSB Rules, including, but not limited to: 2.1.5, 2.2.9, B77.1-3.1.5, 3.3.2.3.1, 3.3.2.3.2, 3.3.2.3.3.

86. These Rules and Standards, adopted by the PTSB, were in effect at the time of Annie Miller's injuries on March 16, 2022.

87. Defendant violated these Rules and Standards, adopted by the PTSB, in the operation, maintenance, design, and construction of the Paradise chairlift.

88. The purpose of these and other similar Rules and Standards adopted by the PTSB is to prevent against the types of injuries, damages, and losses suffered by Annie Miller.

89. The Defendant's violation of this provision of the PTSB constitutes negligence and/or negligence *per se*.

90. Defendant's violations of the Rules and Standards adopted by the PTSB were a direct and proximate cause of Annie Miller's injuries.

91. As a direct and proximate result of these violations, Annie Miller has and will suffer past and future economic losses, past and future non-economic losses, past and future disfigurement damages, and past and future physical impairment damages. Annie Miller has suffered significant and permanent injury and dysfunction, physical impairment and disfigurement, emotional distress, mental anguish, and physical suffering. Annie Miller's injuries have been and will continue to be disabling, incapacitating, and humiliating. Annie Miller's injuries are permanent. Annie Miller has suffered a loss of earning capacity for the future. Annie Miller has suffered and will suffer a loss of the ability to enjoy a normal life. These losses further include, but are not limited to, expenses for physicians, hospitalizations, rehabilitation, and related medical care and treatment. Annie Miller has incurred, and will incur in the future, expenses for physicians, medical procedures, medications, hospitalizations, rehabilitation, therapies,

educational costs, long term care and assistance, and related medical care and treatment.

Third Claim for Relief
Gross Negligence

92. Plaintiff incorporates all the paragraphs in this Complaint by reference.

93. The Defendant had a duty to appropriately operate, design, construct, maintain, and inspect the Paradise ski lift.

94. Defendant consciously and recklessly disregarded the safety of Annie Miller when it engaged in the following willful and wanton conduct:

- a. Failing to stop the Paradise Express chairlift on March 16, 2022 for the Millers when it was obvious that Annie Miller was not properly on the lift when Defendant knew that not properly stopping the lift could result in a fall that could be calamitous to the occupant of the ski lift resulting in serious permanent injury or death, knew that passengers on the Paradise Express chairlift – including Annie Miller – entrusted their safety to the operator of the Paradise Express chairlift, and knew that the operation of a ski lift like the Paradise Express chairlift entailed both greater danger and greater responsibility than circumstances involving ordinary care.
- b. Consciously leaving the loading terminal controls unattended when it was known that doing so carried the risk of serious injury or death.
- c. Consciously deciding not to stop the lift when Annie Miller was not properly on the lift when it was known that doing so carried the risk of serious injury or death.

95. Defendant knew these acts were dangerous, done heedlessly and recklessly, without regard to the consequences or of the rights and safety of others – particularly Annie Miller – and that the acts posed a strong probability of injury her.

96. As a direct and proximate result of the Defendant's gross negligence, Annie Miller has and will suffer past and future economic losses, past and future non-economic losses, past and future disfigurement damages, and past and future physical impairment damages. Annie Miller has suffered significant and permanent injury and dysfunction, physical impairment and disfigurement, emotional distress, mental anguish, and physical suffering. Annie Miller's injuries have been and will continue to be disabling, incapacitating, and humiliating. Annie Miller's injuries are permanent. Annie Miller has suffered a loss of earning capacity for the future. Annie Miller has suffered and will suffer a loss of the ability to enjoy a normal life. These losses further include, but are not limited to, expenses for physicians, hospitalizations, rehabilitation, and related medical care and treatment. Annie Miller has incurred, and will incur in the future, expenses for physicians, medical procedures, medications, hospitalizations, rehabilitation, therapies, educational costs, long term care and assistance, and related medical care and treatment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff MIKE MILLER, as Parent and Guardian of ANNALEA MILLER, his minor child, in his individual capacity, respectfully requests that the Court enter judgment in his daughter's favor and against the Defendant, and award them the following relief:

- a. For past and future compensatory economic and non-economic damages in amounts which will fully compensate for all the injuries and damages suffered by Annie Miller, including general and special damages without limitation, pain, suffering, loss of enjoyment of life, physical impairment, lost wages, loss of earning capacity, medical and hospital expenses, and life care expenses to be proved at trial;
- b. Prejudgment interest beginning from Date of Incident and post judgment

interest;

- c. For reasonable attorneys' fees and costs of suit herein; and
- d. For such other and further relief as this Court deems just and proper.

NOTICE PURSUANT TO C.R.S. § 13-17-201(2)

Plaintiffs hereby give notice that this matter is being brought for the purpose of modifying and amending the law regarding whether exculpatory agreements bar statutory negligence *per se* claims under the Ski Safety Act and the Passenger Tramway Safety Act.

As the law currently and arguably stands, exculpatory agreements may bar statutory negligence *per se* claim under the SSA and PTSA. With this matter, Plaintiffs hereby seek to clarify the rules and regulations that apply to ski area operators.

PLAINTIFF DEMANDS A TRIAL BY JURY

DATED: December 16, 2022.

LEVENTHAL PUGA BRALEY P.C.

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