

Menu

Search

[\(/newyorklawjournal/search/\)](/newyorklawjournal/search/)

My Acco

<HTTPS://STORE.LAW.COM/REGISTR/SOURCE=HTTPS%3A%2F2FNEWYORKLAWJOURNAL%2FASSUMPTION-OF-RISK-HAS-LI/SAYS-IN-INJURED-GIRLS-SUIT-AGAIN>

Publications [~/publications/](/publications/) Law Topics [~/topics/](/topics/) Surveys & Rankings [~/rankings/](/rankings/) Cases [~/newyorklawjournal/case-digests/](/newyorklawjournal/case-digests/)

APPEALTECH  A FULL SERVICE APPELLATE RESOURCE THAT YOU CAN TRUST.

LEARN MORE

News [\(/newyorklawjournal/news/\)](/newyorklawjournal/news/)

Assumption of Risk Has Limits, Appeals Cou Says in Injured Girl's Suit Against Ski Resort

The appeals court pointed out that, while there is some assumption of risk taken on by skiers, a person "will not be deemed to have assumed ... unreasonably increased risks."

By [Jason Grant](/author/profile/Jason-Grant/) | October 15, 2018 at 03:23 PM

f

in


t

G+

D

✉



 <http://www.almreprints.com>

A lawsuit brought on behalf of a girl who broke her leg after crashing into a pole while skiing upstate will go forward because the ski resort may have "unreasonably increased" the skier's risk by not padding the pole, a state appeals court has ruled.

The Appellate Division, First Department panel wrote that "if, as plaintiffs maintain, the unpadded pole was located on the ski trail or in an area where skiing was permitted, then defendants could be found to have failed to maintain their property in a reasonably safe condition."

The panel's unanimous decision reversed the 2017 judgment of Manhattan Supreme Court Justice Manuel Mendez. Mendez had granted summary judgment to defendant Catamount Ski Resort, finding that, based on plaintiffs' allegations, the unnamed girl had "assumed the risks" associated with skiing, the panel wrote.

Trending Stories

- [Rising Stars: The Slideshow](https://www.law.com/newyorklawjournal/stars-the-slideshow/)**
[\(https://www.law.com/newyorklawjournal/stars-the-slideshow/\)](https://www.law.com/newyorklawjournal/stars-the-slideshow/)
NEW YORK LAW JOURNAL
[\(/NEWYORKLAWJOURNAL/\)](/newyorklawjournal/)
- [Queens Judge Accused of In Court 'Belligerence' Is Removed by NY Court of Appeals](https://www.law.com/newyorklawjournal/belligerence-is-removed-by-ny-court-of-appeals/)**
[\(https://www.law.com/newyorklawjournal/belligerence-is-removed-by-ny-court-of-appeals/\)](https://www.law.com/newyorklawjournal/belligerence-is-removed-by-ny-court-of-appeals/)
NEW YORK LAW JOURNAL
[\(/NEWYORKLAWJOURNAL/\)](/newyorklawjournal/)
- [Former Orrick CEO: 'Everybody Wins' If Law Firm Invest, Adapt](https://www.law.com/americanlawyer/everybody-wins-if-law-firm-invest-adapt/)**
[\(https://www.law.com/americanlawyer/everybody-wins-if-law-firm-invest-adapt/\)](https://www.law.com/americanlawyer/everybody-wins-if-law-firm-invest-adapt/)
THE AMERICAN LAWYER
[\(/AMERICANLAWYER/\)](/americanlawyer/)
- ['Dream' Auto Accident Case Wrecked by Trial Evidence Plaintiff Switched Cars](https://www.law.com/dailyreportonline/dream-auto-accident-case-wrecked-by-trial-evidence-plaintiff-switched-cars/)**
[\(https://www.law.com/dailyreportonline/dream-auto-accident-case-wrecked-by-trial-evidence-plaintiff-switched-cars/\)](https://www.law.com/dailyreportonline/dream-auto-accident-case-wrecked-by-trial-evidence-plaintiff-switched-cars/)
DAILY REPORT ONLINE
[\(/DAILYREPORTONLINE/\)](/dailyreportonline/)

5

The panel pointed out that, while there is some assumption of risk taken on by skiers, a person "will not be deemed to have assumed ... unreasonably increased risks," quoting *Morgan v. State of New York*.

"On the record before us, we cannot conclude, as a matter of law, that the pole was off-trail and that the pole did not need to be padded," Justices John Sweeny, Peter Tom, Ellen Gesmer, Cynthia Kern and Peter Moulton wrote, and therefore the girl's risk on the slopes may have been unreasonably increased.

The girl, age 9 at the time of her crash, was skiing down a trail at the Catamount resort, located in Hillsdale, near the Berkshires, when a snowboarder caused her to crash into a snow-machine pole, Mendez wrote in his 2017 decision.

She suffered a left femur fracture, among other injuries, Mendez wrote. Her parents, Steven and Rebecca Madsen, brought their suit, *Madsen v. Catamount Ski Resort*, against Catamount and related defendants in 2015.

The resort's attorney, Matthew Kelly, a partner at Roemer Wallens Gold & Mineaux in Albany, said Monday that his client will seek leave to appeal the First Department's ruling to the state's high court.

Kelly said the First Department justices incorrectly relied on a Fourth Department case in their decision. He added that the state General Obligations Law makes express what type of ski report equipment must be padded, and snow-making machines are not included in the list.

Conversely, the First Department panel wrote in the Oct. 11 opinion that "plaintiffs are alleging inadequate padding of defendant's snowmaking pole, a condition not specifically addressed by the statute."

The parents' lawyer, Brian Shoot, a member at Sullivan Papain Block McGrath & Cannavo in Manhattan, could not be reached for comment.

[f SHARE ON FACEBOOK](#) [t SHARE ON TWITTER](#)

Jason Grant

Jason Grant is a New York-based litigation reporter for the New York Law Journal and Law.com, and a former practicing attorney in Manhattan. Contact Jason at jgrant@alm.com. On Twitter: [@JasonBarrGrant](#)



[\(/author/profile/Jason-Grant/\)](/author/profile/Jason-Grant/)

[More from this author → \(/author/profile/Jason-Grant/\)](/author/profile/Jason-Grant/)

Dig Deeper

[Civil Appeals \(/topics/civil-appeals/\)](/topics/civil-appeals/) [Personal Injury \(/topics/personal-injury/\)](/topics/personal-injury/)

Judge Dismisses Stormy Daniels' Suit Against Trump
[\(https://www.law.com/newyorklawjournal/2018/10/15/judge-dismisses-stormy-daniels-suit-against-trump/\)](https://www.law.com/newyorklawjournal/2018/10/15/judge-dismisses-stormy-daniels-suit-against-trump/)

[THE RECORDER \(/THERECORDER/\)](#)

APPEALTECH
YOUR APPELLATE PARTNER

A FULL SERVICE APPELLATE RESOURCE THAT YOU CAN TRUST.

[LEARN MORE](#)

APPEALTECH
YOUR APPELLATE PARTNER

A FULL SERVICE APPELLATE RESOURCE THAT YOU CAN TRUST.

[LEARN MORE](#)