

## **Saratoga Judge's Ski Injury Case Chills Teenage Snowboarder**

The time: The morning of the day after Thanksgiving.

The place: The Gore Mountain ski resort in North Creek.

The scenario: A 17-year-old snowboarder slides down the mountain. He misjudges the path of a skier beneath him. The snowboarder and skier collide.

And who did Andrew Nicoll, the snowboarder, hit that day? Saratoga Springs City Court Judge Jeffrey Wait, a recently declared state Supreme Court candidate for the Fourth Judicial District.

So hundreds of people on a mountain, and Nicoll runs into an experienced member of the legal profession. What luck!

The accident made Wait very unhappy, to put it mildly. The 52-year-old judge says he lost his cool, angrily confronting Nicoll and demanding that the resort's ski patrol reprimand the teenager and initiate an accident report.

"The kid learned a whole new vocabulary," Wait says now. "I was so freakin' angry."

Nicoll remembers being intimidated by Wait that morning.

The accident was pretty much out of the teen's mind until about a month later, when his father received a letter from Ginley & Gottman, a Saratoga Springs law firm, telling him that Wait had been "seriously injured" by the collision.

The firm also advised Donald Nicoll that he should notify his homeowners insurance company. Wait, it turns out, intended to file an injury claim.

That surprised the Clifton Park family, because the judge hadn't seemed hurt that morning. The Nicolls were also shocked that Wait would file a claim on such an unintentional incident.

"I wasn't doing anything stupid," Andrew Nicoll said. "I was riding straight, and he ended up turning right and I hit him."

Donald Nicoll, a 49-year-old product engineer, contacted the Times Union

because he believes the insurance claim offers voters insight into the mind-set of an elected official seeking higher office. He's right, whether or not you agree with the judge's decision, The topic, I think, also sheds light on liability issues involved with hitting the slopes.

I don't think most people give those issues much thought. I never did when, as a new snowboarder, I careened down mountains with less control than a blind-folded truck driver. And I didn't have the personal-liability protection that's typically included with renters or homeowners insurance.

Wait, however, doesn't find the topic particularly noteworthy. To him, his insurance claim was a rather routine move on a personal health issue and thus unworthy of news coverage.

The judge, a Democrat, remains upset about the collision, believing it resulted from irresponsible behavior. He's also angered that Nicoll would question the insurance claim or mention it to a newspaper.

But Wait, an accomplished skier who learned the sport when he was 7, insists he wasn't thinking about a lawsuit or insurance when he asked the ski patrol to track down the younger Nicoll, thus securing the address he would need to file the claim.

"I wanted the ski patrol to ram it into the kid's head that it's never OK to run into someone," he said. "If you run into somebody, that means you're not in control."

Wait didn't know he was hurt until he felt pain later in the day. A trip to the emergency room, he says, showed a broken scapula and a torn rotator cuff. The judge said he's still in pain.

Wait's injuries are covered by health insurance, of course, but the judge, who says he hasn't been skiing since, believes he's due additional compensation.

Thus, the insurance claim.

"Some kid has ruined my winter, and I don't know if I'm ever going to be 100 percent," said Wait, who has personal-injury law experience in the private sector. "I'm entitled to be compensated for that. That's how our system works."

True enough. But we don't have to like our system.

Wait, the son and great-great grandson of Saratoga County district attorneys, said it's unlikely he'd have sought compensation if Don Nicoll wasn't an insured homeowner. He noted the insurance payout — if it eventually comes — won't be borne by the wallet of the Nicolls family.

But insurance payouts do, of course, raise the cost of coverage for everybody else. In fact, our lawsuit- and damages-happy society is making nearly everything more expensive — including the ever-rising cost of medical care and prescription drugs.

Nicoll didn't hit Wait intentionally. Can't an accident just be an accident, no lawyers necessary?

Actually, the Nicoll's insurance company might just have had legal justification to reject the claim. (Wait said the company has responded to his claim and has an adjuster working on it.)

Under New York law, ski mountains are considered inherently dangerous places and skiers assume risk just by getting on the mountain, said Michael Macomber

, an attorney with Tully Rinckey in Colonie. And that includes risks associated with the behavior of other skiers.

Prior court decisions have found that for a skier to win damages, Macomber said, he must show he was injured by a skier who was either wantonly reckless or intentionally trying to cause hurt.

Nicoll, in my opinion, was neither.

New York state law, however, does advise that a skier who is lower on the mountain always has the right of way. So the Shenendehowa High School senior should pass with much

more caution.

He says he's already doing so.

"I've definitely taken more precautions since (the collision) happened," Nicoll said. "If I can't tell what somebody is going to do, I stop and wait."