

<p>COLORADO COURT OF APPEALS 2 East 14th Avenue, Denver, Colorado 80203</p>	<p>DATE FILED: August 8, 2018 5:35 PM FILING ID: E9E053EEFA879 CASE NUMBER: 2018CA1471</p>
<p>Appeal from: Eagle County District Court, No. 2015CV15, Hon. Frederick W. Gannett; &amp; Broomfield County Dist. Court, No. 2012CV175, Hon. Charles C. Crabtree, Chris Melonakis, Patrick T. Murphy</p>	
<p><b>Plaintiff–Appellants:</b> LOUISE H. INGALLS and STEPHEN E. CONLIN, individually, and as surviving parents of TAFT M. CONLIN  v. <b>Defendant–Appellee:</b> The Vail Corporation, a Colorado Corporation</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Respondent: James G. Heckbert, Reg. No. 37230 <a href="mailto:jheckbert@burgsimpson.com">jheckbert@burgsimpson.com</a> Nelson Boyle, Reg. No. 39525 <a href="mailto:nboyle@burgsimpson.com">nboyle@burgsimpson.com</a> BURG SIMPSON ELDREDGE HERSH &amp; JARDINE, P.C. 40 Inverness Drive East Englewood, Colorado 80112 Tel: (303) 792-5595   Fax: (303) 708-0527</p>	<p>Case No.: _____</p>
<p><b>NOTICE OF APPEAL</b></p>	

## NATURE OF THE CASE

**(A) A general statement of the nature of the controversy**

The Prima Cornice Trail at Vail Mountain has two identified entrances, a

“lower gate” and an “upper gate.” On a Sunday in 2012, during the first big snowstorm of the year, avalanche danger was high on Vail Mountain. Vail had previously closed the upper Prima Cornice Trail gate due to low snow coverage at that location; however, the lower gate remained open. Given the high avalanche danger on Sunday, January 22, Vail decided to keep the upper Prima Cornice Trail gate closed due to avalanche danger. Meanwhile, Vail decided to allow the lower gate to remain open. In violation of § 33-44-107(4), Vail did not place any signs or ropes at either the upper or lower gates to notify the public of the fact that by closing the upper gate, it intended to close that portion of the Prima Cornice Trail between the two gates. That afternoon, Taft Conlin skied through the open lower gate, turned right, and side stepped up the ridge line between the two gates. Conlin descended from the ridge between the two gates and died in an avalanche after making several turns. His parents brought this wrongful death lawsuit, claiming Vail was negligent per se under the Ski Safety Act in causing Taft’s death.

**(B) The judgment, order or parts being appealed and a statement indicating the basis for the appellate court's jurisdiction**

Ingalls and Conlin appeal from the change of venue order, pretrial orders, rulings during trial before a jury, and erroneous instructions and an erroneous verdict form that resulted in a defense verdict, and the jury verdict. While the

Defendant submitted a proposed form of judgment and the Plaintiffs filed a response indicating they do not oppose the proposed form of judgment, it is unclear whether the district court has entered its final judgment under C.R.C.P. 58(a). Some precedent, for instance, indicates that the entry of a minute order could satisfy the requirements of C.R.C.P. 58(a). For instance, only one minute order dated June 20, 2018, is available on the online filing system. But the online docket indicates two entries on that date (the date of the jury's verdict)—one saying "Minute Order – Print" and another indicating "JTRL Dispo – Verdict for Defendant." Another entry that day indicates, "Case Closed." It's unclear whether judgment has entered. Assuming the district court has appropriately entered judgment on the jury's verdict under C.R.C.P. 58(a), this court then has jurisdiction under C.A.R. 4(a).

**(C) Whether the judgment or order resolved all issues pending before the trial court including attorneys' fees and costs**

No. The judgment resolved all issues except for costs. Vail's request for costs remains has yet to be filed.

**(D) Whether the judgment was made final for purposes of appeal pursuant to C.R.C.P. 54(b)**

No. This is an appeal follows a jury verdict and final judgment entered

pursuant to C.R.C.P. 58(a).

**(E) The date the judgment or order was entered (if there is a question of the date, set forth the details) and the date of mailing to counsel**

The jury verdict entered on June 20, 2018. Vail submitted a proposed form of judgment on July 18, 2018. Ingalls and Conlin filed a response indicating no objection to Vail's form of judgment. The court has not yet entered judgment on that form of judgment. The online filing system indicates a minute order entered on June 20, 2018. It is unclear whether the court entered final judgment through a minute order on June 20, 2018.

**(F) Whether there were any extensions granted to file any motion(s) for post-trial relief, and, if so, the date of the request, whether the request was granted, and the date to which filing was extended**

No.

**(G) The date any motion for post-trial relief was filed**

No such motion was filed.

**(H) The date any motion for post-trial relief was denied or deemed denied under C.R.C.P. 59(j)**

Not applicable.

**(I) Whether there were any extensions granted to file any notice(s) of**

**appeal, and, if so, the date of the request, whether the request was granted, and the date to which filing was extended**

No.

**(3) An advisory listing of the issues to be raised on appeal**

Whether the district court reversibly erred when it improperly admitted misleading, inadmissible, or irrelevant evidence at trial.

Whether the district court reversibly erred when it improperly excluded evidence at trial.

Whether the district court reversibly erred in its evidentiary or other rulings before and during trial.

Whether the district court reversibly erred when it allowed a jury view.

Whether the district court reversibly erred when it transferred venue from Broomfield County to Eagle County.

Whether the district court reversibly erred when it denied the plaintiffs' verified motion to disqualify judge

Whether the district court improperly instructed the jury.

Whether the district court approved and provided the jury with an improper verdict form.

**(4) Whether the transcript of any evidence taken before the trial court**

**or any administrative agency is necessary to resolve the issues raised on appeal;**

Transcripts of the following proceedings, some of which already are transcribed, will be necessary to resolve the issues on appeal.

Transcripts of Proceedings in Eagle County District Court:

- Transcript of trial proceedings from June 11-15 & 18-20, 2018
- Transcript of jury instruction conference on June 19, 2018
- Transcript of Status Conference on June 1, 2018
- Transcript of Pretrial Readiness Conference on April 23, 2018
- Transcript of Status Conference on July 27, 2017
- Transcript of Status Conference on July 24, 2017
- Transcript of Pretrial Readiness Conference on July 11, 2017
- Transcript of Hearing on May 15, 2017
- Transcript of Status Conference on March 28, 2017
- Transcript of Status Conference on August 1, 2016
- Transcript of Status Conference on July 15, 2016
- Transcript of Status Conference on August 3, 2015

Transcripts of Proceedings in Broomfield County District Court:

- Transcript of Case Management Conference on February 20, 2015
- Transcript of Status Conference on August 28, 2014

- Transcript of Hearing on June 6, 2014
- Transcript of Motions Hearing on February 19, 2014
- Transcript of Status Conference on January 29, 2014
- Transcript of Motions Hearing on July 12, 2013
- Transcript of Status Conference on February 27, 2013
- Transcript of motions Hearing on December 12, 2012
- Transcript of Status Conference on November 7, 2012

**(5) Whether the order on review was issued by a magistrate where consent was necessary. If the order on review was issued by a magistrate where consent was not necessary, whether a petition for review of the order was filed in the trial court and ruled on by a trial court judge pursuant to the Colorado Rules for Magistrates**

No.

**(6) The names of counsel for the parties, their addresses, telephone numbers, e-mail addresses, and registration numbers**

Counsel for Plaintiffs–Appellants Louise H. Ingalls and Stephen E. Conlin:

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**(7) An appendix containing a copy of the judgment or order being appealed, the findings of the court, if any, the motion for new trial, if any, and a copy of the trial court's order granting or denying leave to proceed in forma pauperis if appellant is filing without docket fee pursuant to C.A.R. 12(b);**

1. Jury Verdict form, dated June 20, 2018.
2. Minute Order, dated June 20, 2018
3. Order Denying Plaintiffs' Verified Motion to Disqualify Judge, dated



July 26, 2017

4. Order by Hon. C. Scott Crabtree, Broomfield County Dist. Ct., dated  
April 13, 2015

Dated: August 8, 2018.

**BURG SIMPSON ELDREDGE  
HERSH & JARDINE, P.C.**  
*(Signed Original on File)*

/s/ Nelson Boyle  
James G. Heckbert, Reg. No. 37230  
Nelson Boyle, Reg. No. 39525  
***Attorneys for Plaintiffs–Appellants***

### **CERTIFICATE OF SERVICE**

I certify that on August 8, 2018, I served a true and correct copy of the  
foregoing **NOTICE OF APPEAL**, via the Court E-Filing System, upon:

*Attorneys for The Vail Corporation*  
Hugh Q. Gottschalk  
Craig R. May  
Thomas A. Olsen  
Wheeler Trigg O'Donnell LLP

/s/ Nelson Boyle