

1 East Healy. Conditions at the summit at this time had been described by Mt. Bachelor employees,
2 working at the bottom of the Summit Express lift, as good with minimal ice build-up making the
3 runs compatible with the Brian and Brecken Boice’s abilities and experience.

4 5.

5 When Brian and Brecken Boice unloaded from the Summit lift, they encountered
6 unexpected and severe ice conditions in the immediate vicinity of the unloading area. Before they
7 were able to investigate the run most compatible with their abilities and the conditions, Brecken
8 fell and started to slide down the mountain, gaining speed and impacting rocks and other obstacles
9 on or near the run. During the slide, Brecken’s skis were ripped off, his helmet was ripped off, as
10 were articles of clothing. Brecken slid to the bottom of the run without stopping. The impacts to
11 his head and body caused devastating injuries, as hereinafter set forth.

12 6.

13 The Mount Bachelor ski patrol arrived on the scene approximately twelve (12) minutes
14 after receiving Brian Boice’s call for help. After the Mt. Bachelor ski patrol arrived and assessed
15 Brecken’s condition, they called for emergency helicopter transport. Brecken Boice was
16 transported by Life Flight to St. Charles Hospital in Bend, Oregon. Medical and surgical staff
17 made heroic efforts to save his life. They were unsuccessful and he died at 10:47 p.m. on January
18 16, 2021.

19 7.

20 Brian Boice witnessed his son start to slide but was unable to reach his son to arrest his
21 slide. Brian Boice was unable to control his own descent and slid down the Healy Heights run,
22 losing clothing and impacting obstacles with his own body, while watching his son collide with
23 multiple rocks and other objects. Brian Boice heard his son’s screams as Brecken continued to
24 hurtle down the icy slope. When Brecken’s screams stopped, Brian Boice followed the trail of
25 blood to his son’s body, where he desperately tried to comfort his little boy and protect him from
26 other skiers who had lost control on the extreme ice and were hurtling toward them. Brian Boice

1 can be heard on 911 audio begging for help for his son, who he watched suffer as they waited for
2 help to arrive.

3 8.

4 Defendants, and each of them, acting independently and/or through their employees and/or
5 agents, were negligent and failed to protect Brecken Boice from injury and death by failing to
6 adequately perform their duties as a possessor of land, and creating the dangerous conditions set
7 forth below, which conditions were not an inherent risk of skiing, and were not reasonably obvious,
8 expected, nor necessary, in one or more of the following particulars:

- 9 a) In failing to adequately inspect and monitor for hazardous ice conditions
10 within resort bounds that were not reasonably obvious or visible to patrons
in general, and Brecken and Brian Boice in particular;
- 11 b) In failing to limit the number of open ski runs and parts of the resort where
12 unexpected and unanticipated hazardous ice conditions were present;
- 13 c) In failing to monitor and anticipate unreasonably dangerous conditions on
14 man-made features within the ski area such as the area around and including
the Summit Express unloading zone, the presence of which created a
15 reasonably foreseeably and unreasonably dangerous risk of harm to
Brecken and Brian Boice;
- 16 d) In failing to close areas to skiers when unexpected hazardous ice conditions
17 were present, including the area where Brecken and Brian Boice off-loaded
from the Summit chair lift, at which time they encountered the hazardous
18 ice conditions described above, thereby creating a reasonably foreseeably
and unreasonably dangerous risk of harm to Brecken and Brian Boice;
- 19 e) In failing to adequately educate and inform their customers about the
20 dangers of the ice conditions present within the resort, which conditions
were not reasonably obvious, expected, or necessary, to patrons at the resort
21 in general, and Brecken and Brian Boice in particular;
- 22 f) In failing to employ enough properly trained, knowledgeable, and equipped
23 staff to safely monitor for hazardous ice conditions and respond to the same
by means of informing customers of the potentially life-threatening
24 conditions via oral warnings and/or multiple signs proximately posted at the
bottom and top of the Summit Express chairlift corrals, at a time when
25 defendants, and each of them, knew, or, in the exercise of reasonable care,
should have known, of the reasonably foreseeable and unreasonably
26 dangerous risk of harm created thereby;

- 1 g) In failing to place staff in key positions to inform customers of the presence
2 and increased danger of hazardous ice conditions within the resort thereby
3 making those conditions not reasonably obvious or expected to Brecken and
4 Brian Boice;
- 5 h) In failing to provide any or adequate or warnings to customers at the ski
6 resort in general, and Brecken and Brian Boice in particular, about the
7 presence of the hazardous ice conditions leading to and on the ski slopes
8 within the resort, at a time when defendants, and each of them, knew, or, in
9 the exercise of reasonable care, should have known, of the reasonably
10 foreseeable and unreasonably dangerous risk of harm created by the icy
11 conditions;
- 12 i) Failing to adequately train employees, staff, and other agents of the ski
13 resort to monitor, inspect and report the presence of hazardous ice
14 conditions on the areas leading to and including runs within the resort,
15 thereby failing to make those hazards reasonably obvious;
- 16 j) Failing to develop and implement a systematic method for regularly
17 monitoring, inspecting and evaluating the safety of runs, loading, and
18 unloading zones, within the resort, thereby creating a reasonably
19 foreseeable and unreasonably dangerous risk of harm for patrons at the ski
20 resort in general, and Brecken and Brian Boice in particular;
- 21 k) Failing to develop and implement an appropriate chain of command for
22 decision-making related to the safety of opening or keeping open certain
23 areas within the ski resort;
- 24 l) Failing to implement and follow a ski-industry-wide standard policy of
25 closing trails that present exceptionally icy and dangerous conditions that
26 are not obvious, thereby creating a reasonably foreseeable and unreasonably
dangerous risk of harm.

9.

The aforementioned acts of defendants, and each of them, created a condition that was not an inherent risk of skiing, as set forth in ORS 30.970 and 30.975; the risks created by the icy conditions were neither obvious, expected, nor necessary.

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10.

The negligence and/or fault of defendants, and each of them, was a substantial factor in causing or contributing to the death of Brecken Boice and the severe emotional distress of Brian Boice.

11.

The negligence and/or fault of defendants, and each of them, in one or more of the particulars set forth herein, was a substantial factor in causing, contributing to, and/or enhancing the following injuries, and ultimately the death of plaintiff's decedent, Brecken Boice:

- a) Open fracture of skull;
- b) Subdural hemorrhage;
- c) Cardiac arrest;
- d) Hypovolemic shock;
- e) Closed, comminuted fracture of shaft of right femur;
- f) Traumatic pneumothorax;
- g) Hemorrhagic shock;
- h) Hypothermia due to exposure;
- i) Disseminated intravascular coagulopathy;
- j) Acute renal injury;
- k) Hepatic shock;
- l) Numerous lacerations, contusions, and abrasions of the torso, head and face.

12.

Plaintiff's decedent, Brecken Boice, underwent the following surgical and medical procedures between the time of his injuries and the time of his death:

- a) Craniotomy/craniectomy;
- b) Massive blood transfusions;
- c) Cardiopulmonary resuscitation with return of spontaneous circulation;

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17.

The negligence and/or fault of defendants, and each of them, caused the estate to incur the sum of \$9,661.25 for the reasonable burial and funeral expenses of plaintiff’s decedent, Brecken Boice.

18.

Plaintiff Estate of Brecken Boice is entitled to interest at 9% per annum for the estate’s economically verifiable losses from the date of loss to the date of judgment.

19.

Plaintiff, Estate of Brecken Boice, reserves the right to amend this Complaint at the time of trial to more completely allege the estate’s economic losses and/or to conform to proof offered at trial.

20.

Although the defendants had actual knowledge of Brecken Boice’s death on the day of the incident, satisfying the requirements of ORS 30.980, the plaintiffs also served notice of Brecken’s injury and death on the defendants by registered and certified mail on April 29, 2021.

21.

Plaintiffs hereby demand a jury trial.

**COUNT TWO
(Gross Negligence)**

22.

Plaintiffs reallege ¶¶ 1 through 21 of Count One of their First Claim for Relief.

23.

The aforementioned negligent acts of defendants, and each of them, as set forth in ¶8 above, constituted gross negligence. The acts of defendants, in failing to close the Summit lift when conditions were this extreme, and in informing Brian Boice and his son that the conditions were good and that there was minimal ice build-up, making the runs compatible with their abilities and

1 experience, and in failing to post warning signs that afternoon until after Brecken Boice fell and
2 suffered injuries as described above, amounts to a degree of inattention that is inexcusable under
3 the circumstances.

4 24.

5 The negligent acts of defendants, and each of them, as set forth in ¶8 above, were done with
6 a conscious indifference to the safety of patrons at the ski resort in general, and Brecken and Brian
7 Boice in particular, thereby constituting gross negligence.

8 25.

9 The acts of defendants, in informing Brian Boice and his son that the conditions were good
10 and that there was minimal ice build-up, making the runs compatible with their abilities and
11 experience, and in failing to post warning signs that afternoon until after Brecken Boice fell and
12 suffered injuries as described above, displayed a near total disregard for the rights of patrons at the
13 ski resort in general, and Brecken and Brian Boice in particular, and a near total indifference to the
14 consequences of their acts, thereby constituting gross negligence.

15 26.

16 Plaintiff's decedent, Brecken Boice, suffered injuries, underwent surgical procedures, and
17 ultimately died, and the Estate is entitled to damages on Count Two of the First Claim for Relief as
18 set forth above in ¶¶11 through 19 of Count One of the First Claim for Relief.

19
20 **SECOND CLAIM FOR RELIEF**
21 **(Plaintiff Brian Boice)**
(Negligent Infliction of Emotional Distress)

22 27.

23 Plaintiffs reallege ¶¶ 1 through 10 and 23 through 25 of their First Claim for Relief.

24 28.

25 Plaintiff Brian Boice, as alleged above, witnessed his son sliding out of control on the ice
26 as he struck various fixed objects on or near the intermediate run and witnessed the severe injuries

1 suffered by his son, Brecken Boice, on January 16, 2021. As a result thereof, plaintiff Brian Boice
2 suffered anxiety, stress, worry, terror, and the deep sense of loss related to his son's ultimate
3 demise, all to his noneconomic damage in a reasonable amount to be awarded by the jury, not to
4 exceed the sum of \$12,000,000.00.

5 WHEREFORE plaintiff Estate of Brecken Boice prays for judgment against defendants,
6 and each of them, in the sum of \$37,708,631.04; plaintiff Brian Boice prays for judgment against
7 defendants, and each of them, in the sum of \$12,000,000.00; both plaintiffs pray for their costs
8 and disbursements incurred herein, and for such other relief as the court deems just and equitable.

9 DATED this 2nd day of August, 2022.

10
11 s/ R. Brendan Dummigan

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