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**Deadly start to the avalanche season highlights tougher attitude to compensation claims**

- No compensation from insurers for risky behaviour on the slopes
- Even off-piste insurance coverage might be inadequate

A deadly start to the avalanche season has highlighted the need for skiers to check their insurance carefully, says legal expert Stephen Mason, co-author of the book *Holiday Law* published by Sweet & Maxwell, a Thomson business (NYSE: TOC; TSX: TOC).

As growing numbers of skiers indulge in adventurous off-piste activity, they may be surprised to find that some accidents are not covered: even though they have policies which include going off-piste, insurers increasingly refuse to pay up for injuries resulting from “risky behaviour.”

This year has seen the deadliest start to an avalanche season in winter playgrounds worldwide:

<table>
<thead>
<tr>
<th>Avalanche Deaths</th>
<th>This Season so far</th>
<th>Same period last Season</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada</td>
<td>11</td>
<td>11 (total average)</td>
</tr>
<tr>
<td>USA</td>
<td>23</td>
<td>20 (total for Season)</td>
</tr>
<tr>
<td>Austria</td>
<td>13</td>
<td>3</td>
</tr>
<tr>
<td>French Alps</td>
<td>7</td>
<td>4</td>
</tr>
</tbody>
</table>

Stephen Mason urges skiers and their families to have a good look at the wording of their insurance policy, even if it covers off-piste activity, before they set off on their skiing holiday. Most importantly, they should follow warnings issued by weather centres at their destination and not venture off-piste if there is a heightened avalanche risk or if they are not familiar with the snow and its qualities.

Stephen Mason, the co-author of *Holiday Law* (Sweet & Maxwell), says: “Courts can now uphold that people should not need to be warned about dangers they should already know they are facing, and this is evident from recent court rulings that follow the trend started by
the House of Lords in 2005 which aims to clamp down on the so-called ‘compensation culture’.

One recent holiday case evidencing this trend is that of Evans v Kosmar Villa Holiday Plc. In this case Kosmar Villa Holidays Plc won its appeal against an earlier court decision that it was liable for the personal injury claim of James Evans, who argued that Kosmar owed him compensation after he dived into the shallow end of his hotel swimming pool in Corfu, Greece, hit his head on the bottom and sustained serious injuries resulting in incomplete tetraplegia. The Court of Appeal ruled that Kosmar had no duty to protect against obvious risks.

Explains Stephen Mason: “Skiers should be aware that they engage in some winter activities at their own risk, and they should be warned that not every accident can result in a successful compensation claim,” says Stephen Mason. “Each accident will from now on be investigated in the broader context of its occurrence to establish whether the danger was unpredictable or whether sufficient warnings were in place that should have deterred the skier.”

**Situations in which skiers or snowboarders may not be covered by the insurance**

1. **Severe weather:** Skiing during adverse weather conditions, if there is a heightened risk of avalanches, may not be covered by insurance policies. Skiers may invalidate policies if they expose themselves to excessive risk.

2. **Breaking the Skiing Code:** Skiers and snowboarders are expected to abide by the Skiing Code, in the same way that motorists are supposed to obey the Highway Code. Individuals suffering injuries as a result of skiing recklessly, may not be covered if their injuries resulted from violations to the Skiing Code, and may even find themselves sued by other skiers injured by them or facing criminal prosecutions.

3. **Off-Piste skiing accidents:** According to Stephen Mason, tour operators or ski schools could be liable if a ski instructor takes skiers off-piste, which results in injury or death. “Booking skiing lessons through a tour operator as part of the package may give holidaymakers better protection if the instructor's negligence results in an accident, but people often think they can get lessons cheaper by booking direct at the resort and end up having to sue a local ski school in a foreign country when an accident occurs.”

4. **Injuries while intoxicated:** Injuries sustained on the slopes while under the influence of alcohol or drugs are increasingly common, but are often excluded from insurance policies.

5. **Tobogganing accidents:** According to Stephen Mason, confusion can arise with regards to tobogganing, as there are not set rules for the sport analogous to the skiing code. Tobogganers are therefore encouraged to raise this issue with their insurers to establish what their insurance will cover in the event of an accident whilst tobogganing.
Notes to Editors:

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