Court overrules ski-injury award Judge erred in ballerina case, panel says

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The 10th U.S. Circuit Court of Appeals yesterday tossed out a key ruling in a suit that resulted in a $2.4 million award to a Broadway theater ballerina who collided with another skier at Snowmass.

A three-judge panel held that U.S. District Judge Edward Nottingham erred in ruling that Alexander Shvartsman, a 45-year-old commodities trader, was solely to blame for the 1993 collision that damaged ballerina Catherine Ulissey's knee and impaired the 32-year-old woman's ability to continue her career. Judge John Moore wrote the decision.

Shvartsman allegedly was skiing straight downhill from an intermediate slope onto a beginner's slope, where Ulissey was "snow-plowing," or practicing a beginner's style of skiing.

She allegedly was knocked over by Shvartsman when she traversed the slope and he ran over her skis. But Shvartsman disputed that account, claiming Ulissey ran over his skis.

The reversal and remand to the lower court handed down yesterday means that a jury - not a judge - will have to determine exactly what happened and how much of the responsibility to assign to each of the parties.

Nottingham had granted Ulissey's motion for summary judgment in December 1993, ruling that the sole issue to be decided by the jury was the amount of damages due Ulissey.

Nottingham upheld the contention of Ulissey's attorney, Jim Chalat, that because Shvartsman was uphill from the dancer before the collision, he alone was liable.

In June 1994, the jury returned a verdict of $500,000 for Ulissey's pain, disability and disfigurement, and $1.6 million for the loss of past and future earnings.

Interest brought the total to $2.4 million.

Moore's ruling yesterday was full of skiing metaphors.

"On review we cut our own trail," he wrote, citing case law that

supports "indulging all the evidence in the light most favorable" to the party not seeking summary judgment.

A court must look at the "facts and law" to determine if a trial is required before granting summary judgment, he wrote.

"Nevertheless, certain legal terrain challenges disposition by summary judgment.

"Indeed, the substantive slope of negligence is a treacherous trail upon which to avoid a trial," the ruling said.

"Its moguls of credibility, determination and subjective reaction provide the perfect course for a jury," Moore wrote.

Noting that Colorado law requires each skier to maintain "control of his speed and course at all times" and to maintain a "proper lookout," the appeals panel said that while an uphill skier has a better chance to keep a lookout, "nothing in the statute makes that skier's duty exclusive."

Once liability is determined, the ruling said, the "degree of fault" must be assigned.

The record doesn't establish who the uphill skier was in the case, the panel said, citing variances in Ulissey's and Shvartsman's accounts of the accident.

That, according to the appeals court, "discloses a dispute over a material fact."

And a jury must decide the issue, Moore wrote in a footnote.

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