

## **“No-Cause” Jury Verdict in Ski Accident Case Relies on Fourth Department’s Decision on Standard of Recklessness**

In February, 2008 the plaintiff was skiing at HoliMont Ski Resort when she collided with another skier, our client, and was injured. The plaintiff, represented by Cellino and Barnes, sued the defendant for injuries she sustained to her left shoulder in the collision. Alan DePeters tried the case before Monroe County Supreme Court in Rochester. The jury returned a “no-cause” verdict.

The case is significant as it explored the boundaries of the Appellate Division Fourth Department’s decision in the recent case of *DeAngelis v. Protopopescu*, 37 A.D.3d 1178 829 N.Y.S.2d 790 (4<sup>th</sup> Dept. 2007) and other recent cases involving recreational accidents. In *DeAngelis*, the Fourth Department held that in order for a defendant to be found liable to a plaintiff for personal injury sustained while participating in an inherently dangerous sport (such as downhill skiing) the defendant must not be guilty of mere negligence, but rather of recklessness.

The recklessness standard is a far higher standard than ordinary negligence and was defined by the Fourth Department in *DeAngelis* as “the conscious or intentional doing of an act of an unreasonable character in disregard of a known or obvious risk so great as to make it highly probable that harm would follow, and done with conscious indifference to the outcome.”

After depositions, we moved on behalf of the defendant for summary judgment, which was narrowly denied, and plaintiff attempted to settle the case for a substantial sum. Relying on the strong facts and holding of *DeAngelis*, the insurer of our client rejected plaintiff’s demand and opted for a jury trial. The case was tried before a jury in April 2010.

At trial, Alan was successful in convincing the jury that even if the accident had happened the way the plaintiff said it did, our client’s actions did not rise to the level of recklessness. The jury agreed with our argument and returned a verdict of no cause of action.

While certainly of great import to the parties involved in the case, the jury’s decision had a broader impact in that it helped to solidify the standard of recklessness set forth in *DeAngelis*, which has been under attack from the plaintiffs bar for some time and will likely continue to be attacked in the future.