

STATE OF MAINE
KENNEBEC, ss.

RECEIVED AND FILED
KENNEBEC SUPERIOR COURT
SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV 96-295
2004 APR 21 10 11 AM

STATE OF MAINE

Plaintiff

v.

AMERICAN SKIING COMPANY,

Defendant

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) SECOND AMENDED
) CONSENT ORDER
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WHEREAS, Plaintiff, State of Maine, having filed its Complaint herein on June 27, 1996, and Plaintiff and Defendant, by their respective attorneys, having consented to the entry of this Second Amended Consent Order without trial or adjudication of any issue of fact or law herein and without this Second Amended Consent Order constituting any evidence against or admission by any party with respect to any such issue;

NOW, THEREFORE, before the taking of any testimony and without trial and adjudication of any issue of fact or law herein, and on consent of the parties hereto, it is hereby ordered, adjudged and decreed as follows:

I. JURISDICTION

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against Defendant under 10 M.R.S.A. §§ 1102-A & 1104.

II. DEFINITIONS

In this Second Amended Consent Order, the following definitions shall apply:

- A. Attorney General shall mean the Office of the Attorney General for the State of Maine.

B. "Covered Ski Ticket" means a ticket for skiing for all or a portion of one day at Sunday River or Sugarloaf, including a posted-price one-day (including a portion of one day) ticket, a one-day ticket purchased or redeemed with a coupon or complimentary pass, a season pass for a skier under age 18, a corporate one-day ticket and a one-day group ticket. Covered Ski Ticket shall not mean or include any ticket for two or more consecutive days of skiing (or for three or more days within one week, whether consecutive or not), a season pass for a skier over age 18, or any ski-lodging package.

C. "Covered Ski Ticket Ratio" shall mean the ratio, expressed as a percentage, that the Resident Covered Ski Ticket Yield has to the Non-Resident Covered Ski Ticket Yield.

D. "Base Covered Ski Ticket Ratio" means the Covered Ski Ticket Ratio for the 1995-96 Ski Season.

E. "Resident Covered Ski Ticket Yield" shall mean the weighted average ticket price charged for covered ski tickets purchased or obtained by residents of the State of Maine.

F. "Non-Resident Covered Ski Ticket Yield" shall mean the weighted average ticket price charged for covered ski tickets purchased or obtained by non-residents of the State of Maine.

G. "Deficiency" shall mean, for any Ski Season in which the Covered Ski Ticket Ratio exceeds the Base Covered Ski Ticket Ratio, the amount in dollars calculated by (a) multiplying the difference between the Covered Ski Ticket Ratio for that season and the Base Covered Ski Ticket Ratio by the Non-Resident Covered Ski Ticket Yield for that season and (b) multiplying the amount determined in (a) above by the number of Maine resident skiers with Covered Ski tickets in that season.

H. "Skiing" shall mean downhill skiing and snowboarding.

I. "Ski Season" shall mean the period of time annually from fall to spring during

which either Sunday River or Sugarloaf are open for skiing.

J. "Sunday River" shall mean the Sunday River ski area owned by Sunday River Skiway Corporation, a wholly-owned subsidiary of Defendant American Skiing Company and located in Newry, Maine.

K. "Sugarloaf" shall mean the Sugarloaf ski area owned by Sugarloaf Mountain Corporation, a wholly-owned subsidiary of American Skiing Company and located in Carrabasset Valley, Maine.

III. PROVISIONS APPLICABLE FOR ALL SKI SEASONS
EXCEPT THE 2003-2004 and 2004-2005 SKI SEASONS

The following requirements shall apply for all Ski Seasons during which this Second Amended Consent Order shall be in effect, except the 2003-2004 Ski Season, which shall be governed by the provisions of Section IV hereof, and the 2004-2005 Ski Season, which shall be governed by the provisions of Section V hereof:

A. Defendant shall determine the Base Covered Ski Ticket Ratio by October 15, 1996; pursuant to a methodology and procedure approved by the Attorney General in his sole reasonable discretion.

B. Defendant shall ensure for the 1996-97 Ski Season, and for each subsequent Ski Season (except the 2003-2004 and 2004-2005 Ski Seasons), that the Covered Ski Ticket Ratio does not exceed the Base Covered Ski Ticket Ratio.

C. Defendant shall report to the Attorney General its Resident Covered Ski Ticket Yield and its Non-Resident Covered Ski Ticket Yield within 30 days after the close of each Ski Season, except the 2003-2004 and 2004-2005 Ski Seasons.

D. Defendant shall determine the Resident Covered Ski Ticket Yield and the Non-Resident Covered Ski Ticket Yield pursuant to a methodology and procedure approved by the Attorney General in his sole reasonable discretion.

- E. (1) If the Covered Ski Ticket Ratio for any Ski Season (except the 2003-2004 and 2004-2005 Ski Seasons) exceeds the Base Covered Ski Ticket Ratio, the Defendant shall calculate the Deficiency, and shall ensure that the Resident Covered Ski Ticket Yield for the next Ski Season is sufficient to meet the Base Covered Ski Ticket Ratio and, additionally, recoup the Deficiency.
- (2) If Defendant's Covered Ski Ticket Ratio for any Ski Season (except the 2003-2004 and 2004-2005 Ski Seasons) exceeds the Base Covered Ski Ticket Ratio, the Defendant shall submit a report to the Attorney General within 30 days after the close of that Ski Season attesting to its calculation of the amount of the Deficiency.
- (3) If Defendant's Covered Ski Ticket Ratio for any Ski Season (except the 2003-2004 and 2004-2005 Ski Seasons) exceeds the Base Covered Ski Ticket Ratio, the Defendant shall submit a report to the Attorney General within 30 days after the close of the next following Ski Season attesting to its recoupment of, or efforts to recoup, the Deficiency from the prior year.
- (4) Beginning with the 1997-98 Ski Season, if the Covered Ski Ticket Ratio exceeds the Base Covered Ski Ticket Ratio for any two consecutive years (excluding the 2003-2004 and 2004-2005 Ski Seasons), the Deficiency for the second year shall be doubled.
- (5) If the Covered Ski Ticket Ratio exceeds the Base Covered Ski Ticket Ratio for three or more years in any five year period (excluding the 2003-2004 and 2004-2005 Ski Seasons), the Deficiency for the third, fourth and fifth years shall be doubled and, in addition, the Attorney General may apply to this Court

for further orders to remedy and sanction Defendant's failure to meet the Covered Ski Ticket Ratio.

IV. PROVISIONS APPLICABLE FOR THE 2003-2004 SKI SEASON

The following requirements shall apply for the 2003-2004 Ski Season only:

A. Defendant will offer discounts to Maine residents at Sugarloaf through its "Maine Days" program on each Wednesday, beginning on the first Wednesday in January 2004 and ending on the first Wednesday in April 2004, excluding the Wednesday during Presidents week, 2004. For purposes of this subparagraph, the discount off the regular window pricing for a single day lift ticket will be not less than 50 percent.

B. Defendant will offer discounts to Maine residents at Sugarloaf through its "Family Days" program on every Sunday in January, 2004. For purposes of this subparagraph, the discount off the regular window price for each single day lift ticket purchased under the program will be not less than 40 percent off the price of an adult single day lift ticket (regardless of the age of the person using the ticket). Other terms of the Family Days program will be the same as, or as favorable to purchasers as, the terms of the Family Days program offered at Sugarloaf during the 2002-2003 Ski Season.

C. Sugarloaf and Sunday River will offer Maine residents discounts on day tickets through participating Maine employers, banks and credit unions during the 2003-2004 Ski Season. The discount will be at least:

- (a) \$7.00 off the weekend/non-holiday, non-discounted, single day ticket price;
- (b) \$8.00 off the holiday, non-discounted, single day ticket price; and
- (c) \$7.00 off the midweek/non-holiday, non-discounted, single day ticket price.

D. Sugarloaf and Sunday River will offer Maine students discounts through an

unrestricted Maine student season pass which carries a discount of not less than 30 percent off the price of the unrestricted equivalent season pass available to non-residents of the same age.

V. PROVISIONS APPLICABLE FOR THE 2004-2005 SKI SEASON

The following requirements shall apply for the 2004-2005 Ski Season only:

A. Defendant will offer discounts to Maine residents at Sugarloaf through its "Maine Days" program on each Wednesday, beginning on the first Wednesday in January 2005 and ending on the first Wednesday in April 2005, excluding the Wednesday during Presidents week, 2005. The price of a single Maine Day ticket will not exceed \$26.00.

B. Defendant will offer discounts to Maine residents at Sugarloaf through its "Family Days" program on every Sunday in January, 2005, except January 2, 2005, and on February 6, 2005. For purposes of this subparagraph, the discount off the regular window price for each single day lift ticket purchased under the program will be not less than 50 percent off the price of an adult single day lift ticket (regardless of the age of the person using the ticket). The Family Days pricing will be available (on the applicable dates) to any group of 2 – 10 Maine residents.

C. Sugarloaf and Sunday River will offer Maine residents discounts on day tickets through participating Maine employers, banks and credit unions during the 2004-2005 Ski Season. The discount will be at least:

- (a) \$7.00 off the weekend/non-holiday, non-discounted, single day ticket price;
- (b) \$8.00 off the holiday, non-discounted, single day ticket price; and
- (c) \$7.00 off the midweek/non-holiday, non-discounted, single day ticket price.

D. Sugarloaf and Sunday River will offer Maine students discounts through an

unrestricted Maine student season pass which carries a discount of not less than 30 percent off the price of the unrestricted equivalent season pass available to non-residents of the same age.

VI. SUCCESSORS

The provision of Sections III, IV and V are binding upon American Skiing Company and upon any person subsequently acquiring or exercising ownership or control of both Sunday River and Sugarloaf.

VII. COSTS

Defendant shall reimburse the Attorney General for (1) its reasonable costs of monitoring Defendant's compliance with this Second Amended Consent Order and (2) its reasonable costs and attorneys fees in securing Defendant's compliance with this Second Amended Consent Order, for the triennial review described in Section VIII and any proceeding under Section IX.

VIII. TRIENNIAL REVIEW

A. Defendant may request in writing that the Attorney General re-examine any provision of this Order.

B. Upon receiving a request pursuant to paragraph A, the Attorney General shall re-examine the provisions of this Second Amended Consent Order noted in the Defendant's request and any other provisions selected by the Attorney General and shall report to the Court as to the need to modify or amend any such provision. Notwithstanding the above, the Attorney General shall not be required to re-examine the provisions of this Second Amended Consent Order more frequently than once in every three years.

IX. RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to the

Second Amended Consent Order to apply to this Court at any time for such further directions as may be necessary or appropriate for the construction or carrying out of this Second Amended Consent Order, for the modification of any of the provisions hereof, for the enforcement of compliance herewith and for the punishment of any violations hereof.

G. STEVEN ROWE
Attorney General

Dated: 4/14/04



By: FRANCIS ACKERMAN, ESQ., Bar No. 2125
Assistant Attorney General
6 State House Station
Augusta, Maine 04333-0006
Attorney for the State of Maine

AMERICAN SKIING COMPANY

Dated: 4/19/04



By: JEFFREY M. WHITE, ESQ., Bar No. 1287
Pierce Atwood
One Monument Square
Portland, Maine 04101-4033

It is hereby ordered and adjudged as set forth above. Judgment shall enter in accordance with the above terms, which are incorporated herein by this reference.

Dated: 4/27/04



JUSTICE, SUPERIOR COURT