



Charging Parties for such disability discrimination which occurred on or about March 6, 2015.

Respondent is enjoined from discriminating against any person with a disability by failing to provide reasonable accommodations as required by law.

Respondent shall comply with any reasonable affirmative relief ordered by the Human Rights Bureau and the Montana Department of Labor and Industry Office of Administrative Hearings.

Respondent shall comply with any reasonable pecuniary measure to rectify the disability discrimination by Respondent.

A contested case hearing will be held on June 23, 2016 to determine the appropriate affirmative relief and damages, if any.

On May 11, 2016, Discovery filed its Renewed Motion for Summary Judgment arguing the remedies sought by the Charging Parties pursuant to the Rule 68 Offer of Judgment were unavailable as a matter of law.

On May 25, 2016, Kolesar and Murphy filed their response to Discovery's summary judgment motion arguing the OAH has broad authority to remedy discrimination and determine appropriate relief.

On June 13, 2016, the Hearing Officer granted in part and denied in part, Discovery's motion. The summary judgment order limited the issues to those set out in Section III below.

## II. HEARING ON DAMAGES

Hearing Officer David Evans convened a contested case hearing in this matter on June 23, 2016 in Helena, Montana. Kolesar represented himself and Eric M. Brewer, attorney at law, represented Murphy. P. Brad Condra, attorney at law, represented Discovery.

At hearing, Ciche Pitcher, Ellyn Murphy, Lee Bergin, Anthony Mendoza, Robert Kolesar and David Byrd all testified under oath. Exhibits 1 through 6, 10 through 11 and 15 through 20 were admitted into evidence.

The parties submitted post-hearing briefs and the matter was deemed submitted for determination after the filing of the last brief which was timely received on August 1, 2016. Based on the evidence adduced at hearing and the arguments of the parties in their post-hearing briefing, the following Hearing Officer decision is rendered.

### III. ISSUES

1. Whether the omission of the word “ski bike” in Discovery’s Adaptive Ski Equipment Access Policy means the Charging Parties or other disabled individuals will have to ask every time for reasonable accommodation from Discovery prior to availing themselves of Discovery’s facilities;

2. Whether the posting on Discovery’s website is sufficient to provide notice to the public about Discovery’s Adaptive Ski Equipment Access Policy or should there be additional ways to notify disabled individuals about Discovery’s Adaptive Ski Equipment Access Policy?

3. Whether training on the MHRA and ADA for employees regularly in contact with disabled individuals is necessary to rectify Respondent’s discriminatory practices and, if so, what type of training is required.

### IV. FINDINGS OF FACT

1. Discovery Ski Corporation owns and operates a ski area and facility located in Granite County Montana, known as Discovery Ski Area (Discovery). Discovery provides ground and aerial lift access for skiers during its winter season between November 27th and April 6th. The ski area includes runs ranging from beginner level to expert only terrain.

2. Ski areas operating under special-use authorization from the United States Forest Service (USFS) are required to comply with both the ADA and Section 504 of the Rehabilitation Act of 1973 (Section 504). The ADA applies because the ski areas operate as a public accommodation, and Section 504 applies because ski areas operate under special-use permits authorized by the USFS. By signing the special-use authorization, the ski area agrees to abide by these and all other applicable laws, regulations, and policies of the federal government. Discovery is located on land owned and leased from the USFS.

3. The USFS has prepared the "Accessibility Guidebook for Ski Areas Operating on Public Lands, United States Department of Agriculture, Forest Service FS-703, Revised November, 2015" (Guidebook). This Guidebook provides information about program accessibility requirements under the ADA and Section 504 with the stated goal of ensuring equal opportunity for active participation in year-round alpine recreation for people with disabilities.

4. Ski area operators must contend with a variety of factors, including varied terrain, sub-freezing temperatures, changes in weather, chair lifts, grooming operations, rescue and evacuation, as well as the needs of individual skiers.

5. A ski bike is a specially engineered bike-like device with skis instead of wheels which is designed to descend snow-covered mountainous terrain. Ski bikes permit users to ski while sitting down, using feet with foot skis for balance and braking and the front ski for carving turns. Ski bikes are designed for adaptive skiing and to accommodate people with disabilities. Currently, there are no ski bikes currently being manufactured solely for use by persons with disabilities.

6. There are many types of ski bikes available. Ski bike designs are widely varied and all ski bikes are manufactured by companies that design and sell ski bikes to persons with and without disabilities. Currently there are two versions of ski bikes which are capable of loading onto a chair lift with the user straddling the device and thereafter sitting upon the device while being transported by the chair lift.

7. One of the available versions of the ski bike is manufactured by a company owned by Kolesar ([www.iskibike.com](http://www.iskibike.com)). Approximately 24 iskibike ski bikes have been manufactured to date. The ski bikes are partially fabricated in Bozeman and assembled at home by Kolesar. The iskibike manufactured by Kolesar allows the user to load the ski bike onto the chair lift while standing up. A user attempting to load a ski bike designed by Kolesar is able to sit upon the device while sitting on a chair lift in much the same fashion that a person using a sit-ski, a bi-ski, or a mono-ski does. The iskibike is unique in the field of ski bikes and can be used by both disabled and non-disabled individuals.

8. Discovery allow persons with disabilities to use adaptive skiing devices. Discovery does not allow the use of ski bikes by the general public. Ski bikes are not expressly included in Discovery's new adaptive ski equipment policy.

9. Discovery is a family-owned business. Ciche Pitcher is part-owner, president and manager of Discovery. Pitcher is authorized and is responsible for setting policies for Discovery.

10. Pitcher's typical work day during the ski season starts around 7:30 am and ends around 8:30 pm. Pitcher typically works in the ticket office, but he also spends parts of his day traveling the mountain overseeing operations. At most, he is eight minutes away from the general ticket office should any issues with customers attempting to access Discovery facilities arise. Either Pitcher or his father, Peter, are at the resort every day.

11. Discovery has 15 full-time employees. During winter ski operation, Discovery operates seven days a week using 60 to 70 employees on busy days and 35 to 40 employees on quieter days. Approximately 40% to 50% of employees return each ski season.

12. On or about March 6, 2015, Kolesar placed a telephone call from his home in Bozeman to Discovery to inquire as to whether Discovery permitted the use of ski bikes at its ski area. Kolesar was advised that Discovery did not allow the use of ski bikes due to safety concerns. Kolesar then inquired whether Discovery would allow the use of ski bikes in an adaptive capacity. At this point the call was transferred to Pitcher. In responding to the question regarding adaptive use of a ski bike, Pitcher responded that, generally, Discovery did not allow ski bikes in any capacity, though they did have other adaptive equipment that could be used. Pitcher based his decision to exclude Kolesar and Murphy on Discovery's written policy that all ski bikes were excluded from Discovery. Pitcher offered Kolesar and his wife the use of a "sit-ski" adaptive device instead.

13. Prior to March 6, 2015, Discovery's written adaptive ski equipment access policy prohibited the use of, among other devices, ski bikes. Discovery's prior written equipment policy prohibiting the use of ski bikes was based upon concerns about the safety of ski bikes. Specifically, Discovery had previously allowed a group of individuals to use their ski bikes at Discovery. However, that experience left Discovery with concerns regarding the safety of those devices. Discovery observed that ski bike users skied in a manner that was not in accordance with normal skier traffic and the ski bike users skied too fast for the conditions. Discovery also observed and developed the belief that ski bikes were incapable of turning and stopping as well as standard ski equipment commonly used at ski areas. Discovery also noted that the number of near collisions involving ski bikers appeared to be out of proportion with what would normally be expected for skiers using standard

equipment. In this regard, Discovery observed that the number of near collisions with ski bikers was significantly greater, from a statistical standpoint, than Discovery considered acceptable based upon the number of skier collisions or near collisions one would expect with regard to an average number of skier visits. As a result of these safety concerns, Pitcher drafted a written policy banning ski bikes as well as other devices it deemed unsafe or unacceptable for use on Discovery's ski slopes.

14. The phone call between Kolesar and Pitcher ended on a sour note as Pitcher was unresponsive to Kolesar's attempt to explain the MHRA and ADA with respect to ski bike use. Pitcher believed that Discovery was accommodating and encouraging in promoting skiing among the disabled community.

15. After Kolesar and Murphy filed their complaints with HRB, Pitcher sought to educate himself further about the needs of disabled skiers. Pitcher consulted the USFS Guidebook and had conversations with other ski operators to learn of their experiences with adaptive ski devices. Pitcher also spoke to David Byrd, general counsel for the National Ski Areas Association, about which ski devices are commonly accepted and used in the ski industry as adaptive ski devices and which meet American National Standards Institute (ANSI) standards applicable to adaptive ski devices.

16. What Pitcher learned was that providing reasonable accommodations for adaptive ski devices was complicated and not a black and white issue. Operations varied from ski resort to ski resort, and were based on each resort's individual situation. The Guidebook specifically states that it is to be used as a resource only and was not intended to impose additional requirements on resort operators. Pitcher was accommodating to Kolesar's ski bike because the iskibike actually locks onto the chair lift, thus minimizing the danger of the iskibike falling from the lift onto skiers below. However, Pitcher was not comfortable with any and all ski bikes operating at Discovery because each ski bike loads differently onto the ski lift and not all ski bikes have the capability of locking onto the chair lift.

17. In addition, Pitcher was concerned about how a ski bike user could potentially be rescued from a chair lift where a unique and relatively unknown device is involved. Discovery understands and trains its ski patrollers regarding the evacuation of standard adaptive devices such as sit skis, bi-skis and mono-skis from its ski lifts in the event of the chair lift/aerial tramway becomes disabled or otherwise inoperable. Discovery does not have training or experience with ski lift evacuation of persons using ski bikes and is concerned that the person and device may invert during a lift evacuation.

18. On October 5, 2015, Discovery voluntarily revised its Adaptive Ski Equipment Access Policy to evaluate ski bikes, and other adaptive devices on a case-by-case basis. It also posted the policy on its website, but did not post it anywhere else. Discovery's Adaptive Ski Equipment Access Policy now provides as follows:

### I. General Ski Equipment Usage

Discovery Ski Area reserves the right to determine the type of equipment allowed to be used on Discovery aerial and surface lifts and terrain. Skis and snowboards must have proper retention and/or braking devices. Sleds, tubes snow skates, skibikes, skibobs, discs, toboggans, snowscooters, body sleds or airboards are not permitted on Discovery Ski Area aerial and surface lifts and terrain. The list of prohibited equipment and practices provided in this section is not exhaustive and subject to change at any time without notice.

### II. Adaptive Ski Equipment

Discovery Ski Area is committed to providing persons with qualifying disabilities the full and equal enjoyment of its goods, services, facilities, privileges, advantages and accommodations. Discovery Ski Area recognizes that no policy can address every possible scenario which may arise or every individual's specific needs. Therefore, if your preferred device is not listed below, please contact us. Upon reasonable notice, Discovery will make a reasonable, individualized assessment for any persons with qualifying disabilities requesting exceptions or modifications to our equipment policies. Due to the Discovery Ski Area's limited staff, Discovery would request that any person requesting an exception or modification to the above policy contact Discovery Ski Area 5 (five) days prior to the date of your arrival. Contact can be made at (406) 563-2184 or [info@skidiscovery.com](mailto:info@skidiscovery.com).

Discovery Ski Area permits the use of specialized ski equipment to allow those persons with qualifying disabilities under the Americans with Disabilities Act of 1990 (hereinafter "ADA") equal access to Discovery Ski Area's aerial, and surface lifts and terrain. A person with a qualifying disability is allowed to utilize specialized equipment, approved by Discovery Ski Area, which has been designed and manufactured primarily for use by individuals who have disabilities. The following is a list of equipment/adaptive ski methods that are expressly permitted for individuals with qualified disabilities under the ADA.

- Three/Four Track Skiing Uses outriggers (to) help compensate for weaknesses in the lower extremities.
- Mono-skiing utilizes a bucket style seat with a single ski underneath it. An individual uses handheld outriggers for balance
- Bi-skiing utilizes a bucket style seat with two skis underneath it. A bi-ski can be skied independently like a mono-ski using the same type of handheld outriggers or can be skied with the assistance of an instructor using fixed outriggers and tethers (reins attached to the back of the bi-ski).

19. As part of the policy not to deny access to Discovery, Pitcher also concluded that Discovery's employees should undergo anti-discrimination training pursuant to the MHRA and ADA. While recognizing it is not practical to train all Discovery employees, Pitcher believes it is necessary to train key employees to develop institutional knowledge with respect to the MHRA and ADA that can be passed along. Discovery has yet to propose a training plan or train its employees about working with and protecting disabled individuals at Discovery.

20. In August 2015, Discovery purchased two Stalmach Rocky Berg Ski Bobs for use by its disabled patrons requiring the use of a ski bike. Discovery purchased the Stalmach Rocky Berg Ski Bobs so that it would have a ski bike with which it was familiar with so that disabled individuals and its employees could be properly trained in the safe use of a ski bike.

21. On October 5, 2015, Pitcher sent a letter to Kolesar and Murphy apologizing for Discovery's lack of knowledge relative to the MHRA and ADA, as well as its lack of knowledge regarding Kolesar's and Murphy's specific disabilities. In that letter, Pitcher invited Kolesar and Murphy to ski at Discovery using their own ski bikes anytime. To date, neither Kolesar or Murphy have skied at Discovery pursuant to Pitcher's offer.

22. The five day request for an exception or modification is not a strict requirement as both Pitcher and his father, Peter are at the resort during every day during ski season.

23. When disabled skiers seek to ski at resort areas such as Discovery, it is common that the skiers look to a resort's website to ascertain what the resort's adaptive ski equipment access policy actually is. Sometimes, however, adaptive ski

equipment access policies are difficult to find on a resort's website. Further, not all disabled individuals wishing to ski have computer or internet access. Therefore, many skiers have to call ahead to the ski area to determine if ski bike access is allowed for disabled individuals. Sometimes, disabled skiers have trouble even talking to the right person who can explain the resort's adaptive access policy and even includes difficulty in finding the correct individual to request modification and accommodation for their adaptive devices.

## V. DISCUSSION<sup>1</sup>

This case is about Kolesar, Murphy and Discovery. It has not been pled as a class action. The complaint filed did not include additional Charging Parties. Discrimination against Kolesar and Murphy has already been established. This decision is only about the appropriate affirmative relief based on the discrimination that has been found.

1. Requiring Discovery to include "ski bike" in its written adaptive ski equipment access policy is not reasonable affirmative relief.

Affirmative relief must be imposed where there is a finding of discriminatory conduct. Mont. Code Ann. §49-2-506(1). Affirmative relief in the form of both injunctive relief and training to ensure that the conduct does not reoccur in the future is necessary to rectify the harm in this case.

Mont. Code Ann. §49-2-506(1) provides:

(1) If the hearings officer finds that a party against whom a complaint was filed has engaged in the discriminatory practice alleged in the complaint, the department shall order the party to refrain from engaging in the discriminatory conduct. The order may:

- (a) prescribe conditions on the accused's future conduct relevant to the type of discriminatory practice found;
- (b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against;
- (c) require a report on the manner of compliance.

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<sup>1</sup> Statements of fact in this opinion are hereby incorporated by reference to supplement the findings of fact. Hoffman v. Niece (1940), 110 Mont. 541, 105 P.2d 661.

The Human Rights Commission is granted broad authority and discretion to remedy discrimination. *Great Falls Pub. Schs v. Johnson*, 2001 MT 95, 305 Mont. 200, 26 P.3d 734,(Mont. 2001).

The legal standards for determining reasonable accommodation provide guidance in determining the affirmative relief. A public accommodation is not required under the Montana Human Rights Act or the ADA to make any and all possible accommodations which would provide full and equal access to disabled patrons. See *Baughman v. Walt Disney World Co.*, 685 F.3d 1131, 1135 (9th Cir. 2012). The public accommodation is required to make reasonable modifications. *Id.* An accommodation is not reasonable under the Montana accommodations statute if implementation of the accommodation would endanger the health and safety of any person.

In an ADA case, the charging party has the burden of putting on evidence to establish that a modification was requested and the modification was reasonable. *Johnson v. Gambrinus Co.*, 116 F. 3d 1052, 1059(5th Cir., 1997). A defendant may counter evidence of the reasonableness of the requested accommodation by showing that the accommodation is not reasonable. *Id.* If the charging party meets its burden, then the defendant must make the modification unless the defendant can show that implementing the modification would fundamentally alter the nature of the public accommodation. *Id.* The charging party at all times retains the burden of persuading the trier of fact that the request for accommodation was made and that it was reasonable. *Id.*

Kolesar maintains the best means to ensure all Discovery employees and the general skiing public are properly informed that ski bike use is permitted and is required by law for disabled individuals is by listing ski bikes among the usual adaptive skiing equipment in Discovery's written adaptive ski equipment access policy.

Kolesar's argument is undercut, however, by the fact that he and his wife have already been allowed to use their iskibikes at Discovery should they wish to do so. In other words, with Discovery's standing invitation, Kolesar has been made whole. To go further and require discovery to include the term "ski bike" does nothing to remedy Kolesar's injuries and only appears to bolster his commercial interest in doing so.

Discovery argues that it excludes ski bikes from its adaptive ski equipment access policy because of safety concerns, and thus no reasonable accommodation needs to be made. This argument is a strong one.<sup>2</sup> This is especially true because even though the Respondents admitted they discriminated against the Charging Parties, the discrimination was against Kolesar and Murphy, not their ski bikes.

After the complaint in this matter was filed by Kolesar, Pitcher, through his research, learned that providing reasonable accommodation for all adaptive ski devices was not clear cut. Because Discovery operates under a special-use permit issued by the United States Forest Service the USFS provides certain guidelines for ski operators to follow. However, Pitcher also learned that these guidelines were not set in stone and varied from one ski operator to another.

The knowledge Pitcher gained led to the re-writing of Discovery's adaptive ski equipment access policy. In writing this policy, Pitcher's foremost concern was the safety of all of Discovery's guests, both disabled and non-disabled alike. However, Pitcher also had to balance the requirements of the MHRA and the ADA in order to make Discovery accessible for all guests, including those with disabilities. Therefore, in order to balance these two interests, Discovery changed its written adaptive ski equipment access policy to include adaptive ski devices such as mono skis, bi skis, outriggers and sit-skis because these devices were specifically designed for the use of those with disabilities. Ski bikes are not.

Discovery's safety concerns with respect to ski bikes also involves the ability of ski bikes and their disabled and non-disabled users to safely load and unload from Discovery's chair lifts. There are many different ski bikes on the market and ski bikes can be used by both disabled and non-disabled individuals alike. Most ski bikes weigh in excess of 40 pounds and most ski bikes do not lock onto the chair lift while going up the mountain. Because the ski bikes would not be locked onto the lift, there is a risk that the devices could fall from the lift and injure a person on the ski trails below. Further, in addition to the chair lift loading and unloading process, Discovery has to consider chair lift evacuations and how those with general ski devices could be taken from the lift in the event of an emergency. Further, past experience taught Discovery that improper use of ski bikes by those individuals

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<sup>2</sup> This tribunal will not address Discovery's written adaptive ski equipment access policy that requires a disabled patron wishing to ski Discovery with a device not listed in the policy give Discovery 5 days notice so that Discovery may do an individualized assessment of such device. This is because Kolesar and Murphy are not subject to such policy by virtue of the standing invitation from Discovery that they may ski Discovery anytime with their iskibikes.

without disabilities at their facility caused further safety concerns and lessened the experience of all Discovery patrons.

Kolesar's argument that the USFS Guidebook requires the use of the word skibike is not supported by the evidence given that there are numerous models of ski bikes on the market and the fact that ski bikes can be used by both disabled and non-disabled individuals. Therefore, Discovery's policy to exclude them is reasonable. The Guidebook does not impose strict requirements on ski operators. "The document was developed as a resource only and is not intended to impose additional requirements on resort operators. Deviations from the guidelines contained herein may be dictated by the circumstances of each individual situation, and operations and procedures may vary from resort to resort." (Accessibility Guidebook for Ski Areas Operating on Public Lands, 2015 Update" Pg. 3). In other words, Discovery is well within its rights to develop an adaptive ski policy that meets its needs, so long as the policy is a reasonable accommodation.

2. Discovery's written adaptive policy on the internet must be posted in other areas of the resort, not just on its website.

Mere access is not enough; full and equal participation of the disabled individual in all privileges and advantages of the public accommodation is required. Mont. Code Ann. §49-2-101(19)(b), Mont. Code Ann. §49-1-102, See, generally, 42 U.S.C. §12182(b).

Currently, Discovery's written adaptive ski equipment access policy is only available and posted on Discovery's website. Discovery argues the policy features prominently on the Discovery website and is easy to access. Additionally, Discovery argues, as the website invites customers to do, that anyone may call and speak to a Discovery employee to further discuss adaptive ski options and accommodations. Therefore, Discovery argues this posting complies with the ADA and is a reasonable accommodation.

Kolesar and Murphy argue that Discovery's policy of only posting its adaptive ski equipment access policy on the website limits access to those individuals who have computers. Kolesar argues the skiing public has a right to the specifics of Discovery's adaptive access policy, whether or not each individual is disabled, and whether or not it has occurred to them to look for the policy on the internet. Kolesar argues Discovery must post its policy in other areas of the Discovery resort, including not only the website, but ticket offices, chairlifts, and other means of easy access to

the public. Only then is Discovery applying its written access policy to everyone, not just those with computer access.

Kolesar's argument is well taken. By only posting its access policy on its website, Discovery is making an unreasonable assumption that every disabled individual wishing to ski Discovery has computer access. Further, this limited posting also assumes that even those disabled individuals with computer access will take the time to review such policy before coming to Discovery. This is not realistic.

Discovery's arguments are further undermined by the fact that Discovery currently posts in various places around its facilities the Montana Skier Responsibility Act, pursuant to Mont. Code Ann. §23-2-736 which sets forth a skier's duties and identifies those inherent risks in the sport of skiing from which a ski area operator is relieved from liability.

Pitcher testified the Skier Responsibility Act was posted in the parking lot, ticket office and by all entries to the chair lifts, with the exception of the chair lifts on the north side of the resort. Therefore, there is no reason that Discovery can not post its written ski equipment adaptive access policy in those same locations so that such policy is clear to disabled and non-disabled individuals alike and it is not that much of a burden for Discovery to do so. Only then is Discovery granting equal access to all.

3. Discovery management and key employees must undergo training on the requirements of the Montana Human Rights Act and the Americans With Disabilities Act and about methods to prevent and timely remedy disability discrimination.

Discovery has not denied that employees need further training on the requirements of the MHRA and the ADA and agrees that such training should be undertaken.

Currently, Pitcher and his father Peter are the only two employees at Discovery that have the experience and training to make the requisite exceptions to Discovery's adaptive access policy in a way that would provide reasonable access to the largest amount of Discovery patrons without sacrificing the safety of disabled and non-disabled individuals at Discovery. While Pitcher testified that he and or his father are available at all times during ski season and that there has yet to be a time when either Pitcher or his father have been unable to respond to a request for disabled access, this, in the opinion of the Hearing Officer, is unrealistic and

unworkable in the long term given the fact that neither Pitcher can be in all places at one time.

During the height of ski season Discovery employees approximately 13 to 16 lift operators, 12 ski patrollers, three to 12 persons in rental operations, three to 25 ski instructors, two to five persons in ticket sales, three to 12 persons in food and beverage, two to three grooming mechanics and three employees in the lift maintenance department. During a busy ski weekend, Discovery has approximately 60 to 70 employees on site.

Obviously, training this large a contingent of employees on the requirements of the MHRA and ADA is unrealistic. This is especially true given the high rate of turnover amongst Discovery employees from ski season to ski season. However, it is reasonable to require key Discovery employees within Discovery's management to learn about and be trained to interpret Discovery's adaptive access policy. This includes not only Pitcher but other members of the staff such as the ticket office manager, the lift operator manager, the ski instructor staff managers and the ski patrol managers. By training these employees, institutional knowledge at Discovery can be developed and passed on to other employees whose jobs might bring them into contact with disabled individuals.

Such training would allow other employees, such as those on the "frontlines" like parking lot attendants, ticket booth staff, ski lift operators and ski patrollers to better understand and recognize those with disabilities. Such training will ensure that when a disabled individual shows up at Discovery wishing to avail himself or herself of Discovery's facilities, the trained employee will welcome them and not discriminate.

## VI. CONCLUSIONS OF LAW

1. The Department of Labor and Industry has jurisdiction over this case. Mont. Code Ann. § 49-2-509(7).

2. Judgment has been rendered in favor of Charging Parties against Respondent pursuant to the Mont.R.Civ.P 68 Offer of Judgment entered on March 8, 2016.

3. Robert Kolesar and Ellyn Murphy are the prevailing parties in this matter.

4. The circumstances of the discrimination in this case mandate imposition of particularized affirmative relief to eliminate the risk of continued violations of the Human Rights Act. Mont. Code Ann. § 49-2-506(1).

## VII. ORDER

1. Respondents are hereby enjoined from engaging in any further acts of illegal discrimination against persons with disabilities in violation of Mont. Code Ann. §49-2-304.

2. Discovery shall not be required to modify its written adaptive ski equipment access policy to include the phrase “ski bike.”

3. Within 30 days after the issuance of this decision, Discovery shall prominently post its written adaptive access policy in its parking lot, ticket booth, chair lift areas (including the north facing chair lift areas), public eating facilities and on its website. Discovery is ordered to file a written report no later than 14 days after complying with this posting requirement with the Human Rights Bureau.

4. Respondents are hereby ordered to have Discovery managers and key employees, including but not limited to, Ciche Pitcher, Peter Pitcher, ticket office managers, lift operation managers and ski patrol managers, undergo appropriate training of not less than four (4) hours during the next six months concerning the duties and obligations of a place of public accommodation not to discriminate against persons with disabilities in any of the services, goods, facilities, advantages, or privileges available at Discovery, including but not limited to, the duty to make reasonable accommodations. Additionally, Ciche Pitcher, Discovery’s chair lift manager and Discovery’s ski patrol manager shall undergo disability training at the Adaptive Ski Congress held in June, 2017 on Mt. Hood in Oregon.

5. Prior to undergoing training, but no later than 45 days after the issuance of this decision, Respondents will provide in writing to the Human Rights Bureau for preliminary approval (with a copy to charging party's counsel) a description of the training program to be used, and the qualifications of the persons conducting the training. Within 30 days after approval by the Human Rights Bureau and after its consideration of the comments submitted by the charging parties, Discovery is ordered to implement the comprehensive plan and file a written report with the Human Rights Bureau every three months until the training plan is fully implemented.

6. Respondents must bear the costs and expenses of the above affirmative relief to be taken to minimize the likelihood of further acts in violation of Mont. Code Ann. §49-2-304.

DATED: this 17th day of November, 2016.

/s/ DAVID W. EVANS  
David W. Evans, Hearing Officer  
Office of Administrative Hearings  
Montana Department of Labor and Industry

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NOTICE OF ISSUANCE OF ADMINISTRATIVE DECISION

To: Robert Kolesar, and Eric Brewer, attorney for Ellyn Murphy; and Brad Condra, attorney for Discovery Ski Corporation:

The decision of the Hearing Officer, above, which is an administrative decision appealable to the Human Rights Commission, issued today in this contested case. Unless there is a timely appeal to the Human Rights Commission, the decision of the Hearing Officer becomes final and is not appealable to district court. Mont. Code Ann. § 49-2-505(3)(c)

TO APPEAL, YOU MUST, WITHIN 14 DAYS OF ISSUANCE OF THIS NOTICE, FILE A NOTICE OF APPEAL, Mont. Code Ann. § 49-2-505 (4), WITH 6 COPIES, with:

Human Rights Commission  
c/o Marieke Beck  
Human Rights Bureau  
Department of Labor and Industry  
P.O. Box 1728  
Helena, Montana 59624-1728

You must serve ALSO your notice of appeal, and all subsequent filings, on all other parties of record.

ALL DOCUMENTS FILED WITH THE COMMISSION MUST INCLUDE THE ORIGINAL AND 6 COPIES OF THE ENTIRE SUBMISSION.

The provisions of the Montana Rules of Civil Procedure regarding post decision motions are NOT applicable to this case, because the statutory remedy for a party aggrieved by a decision, timely appeal to the Montana Human Rights Commission pursuant to Mont. Code Ann. § 49-2-505(4), precludes extending the appeal time for post decision motions seeking relief from the Office of Administrative Hearings, as can be done in district court pursuant to the Rules.

The Commission must hear all appeals within 120 days of receipt of notice of appeal. Mont. Code Ann. § 49-2-505(5).

IF YOU WANT THE COMMISSION TO REVIEW THE HEARING TRANSCRIPT, include that request in your notice of appeal. The appealing party or parties must then arrange for the preparation of the transcript of the hearing at their expense. Contact Annah Howard, (406) 444-4356 immediately to arrange for transcription of the record.