

# The Burger Court Opinion Writing Database

## *Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*

472 U.S. 585 (1985)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



4

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

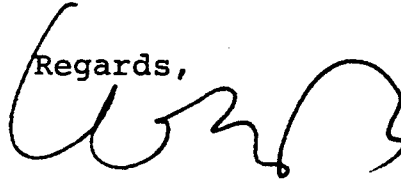
June 11, 1985

Re: No. 84-510 - Aspen Skiing v. Aspen Highlands

Dear John,

I join.

Regards,

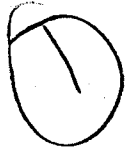


Justice Stevens

Copies to the Conference

82 JUN 15 10 43

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS



CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

Supreme Court of the United States  
Washington, D. C. 20543

June 3, 1985

JUN 03 12 43 PM '85

No. 84-510

Aspen Skiing Company v. Aspen  
Highlands Skiing Corporation

Dear John,

I agree.

Sincerely,

Justice Stevens

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

June 4, 1985

84-510 - Aspen Skiing Company v.  
Aspen Highlands Skiing Corporation

Dear John,

I have had from the outset some doubt about participating in the decision in this case; and after reading your draft and looking at the record, I would feel better if you would show me as not participating in the decision in this case.

Sincerely,



Justice Stevens

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 5, 1985

Re: No. 84-510-Aspen Skiing Co. v. Aspen  
Highlands Skiing Corp.

Dear John:

While I would prefer not to give the free advertisement you give to Aspen in the second paragraph of your opinion - I join.

Sincerely,

*Jm.*

T.M.

Justice Stevens

cc: The Conference

(2)

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 7, 1985

Re: No. 84-510, Aspen Skiing v. Aspen Highlands

Dear John:

Please join me.

Sincerely,



Justice Stevens

cc: The Conference

92-001-3 b 112

312

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 5, 1985

84-510 Aspen Skiing v. Aspen Highlands

Dear John:

Please join me.

Sincerely,

*Lewis*

Justice Stevens

lfp/ss

cc: The Conference

82 10-2 6.11

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

②

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 4, 1985

Re: 84-510 - Aspen Skiing Company v. Aspen  
Highlands Skiing Corporation

Dear John:

Please join me.

Sincerely,

*WHR*

Justice Stevens

cc: The Conference

ST 103

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS



1 PS  
While I would prefer not to give the  
free advertisement you give to Aspen in the  
several paragraphs of your  
opinion - I join  
M  
W

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: Justice Stevens

Circulated: JUN 3 1985

Recirculated:

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-510

**ASPEN SKIING COMPANY, PETITIONER v. ASPEN  
HIGHLANDS SKIING CORPORATION**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE TENTH CIRCUIT**

[June —, 1985]

JUSTICE STEVENS delivered the opinion for the Court.

In a private treble damages action, the jury found that petitioner Aspen Skiing Company (Ski Co.) had monopolized the market for downhill skiing services in Aspen, Colorado. The question presented is whether that finding is erroneous as a matter of law because it rests on an assumption that a firm with monopoly power has a duty to cooperate with its smaller rivals in a marketing arrangement in order to avoid violating § 2 of the Sherman Act.<sup>1</sup>

Aspen is a destination ski resort with a reputation for "super powder," "a wide range of runs," and an "active night life," including "some of the best restaurants in North America." Tr. 765-767. Between 1945 and 1960, private investors independently developed three major facilities for downhill skiing: Aspen Mountain (Ajax),<sup>2</sup> Aspen Highlands

<sup>1</sup>The statute provides, in relevant part:  
"Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony . . . ." 15 U. S. C. § 2.

<sup>2</sup>Ski Co. developed Ajax in 1946. The runs are quite steep and primarily designed for expert or advanced intermediate skiers. The base area of Ajax is located within the village of Aspen.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 2, 9, 25

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: Justice Stevens

Circulated: \_\_\_\_\_ JUN 7 1985

Recirculated: \_\_\_\_\_

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-510

**ASPEN SKIING COMPANY, PETITIONER v. ASPEN  
HIGHLANDS SKIING CORPORATION**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE TENTH CIRCUIT**

[June —, 1985]

JUSTICE STEVENS delivered the opinion for the Court.

In a private treble damages action, the jury found that petitioner Aspen Skiing Company (Ski Co.) had monopolized the market for downhill skiing services in Aspen, Colorado. The question presented is whether that finding is erroneous as a matter of law because it rests on an assumption that a firm with monopoly power has a duty to cooperate with its smaller rivals in a marketing arrangement in order to avoid violating § 2 of the Sherman Act.<sup>1</sup>

I

Aspen is a destination ski resort with a reputation for "super powder," "a wide range of runs," and an "active night life," including "some of the best restaurants in North America." Tr. 765-767. Between 1945 and 1960, private investors independently developed three major facilities for downhill skiing: Aspen Mountain (Ajax),<sup>2</sup> Aspen Highlands

<sup>1</sup>The statute provides, in relevant part:

"Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony . . . ." 15 U. S. C. § 2.

<sup>2</sup>Ski Co. developed Ajax in 1946. The runs are quite steep and primarily designed for expert or advanced intermediate skiers. The base area of Ajax is located within the village of Aspen.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

STYLISTIC CHANGES THROUGHOUT.  
SEE PAGES: 12, 18

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor

From: Justice Stevens

Circulated: \_\_\_\_\_

Recirculated: JUN 10 1985

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 84-510

**ASPEN SKIING COMPANY, PETITIONER v. ASPEN  
HIGHLANDS SKIING CORPORATION**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE TENTH CIRCUIT**

[June —, 1985]

JUSTICE STEVENS delivered the opinion for the Court.

In a private treble damages action, the jury found that petitioner Aspen Skiing Company (Ski Co.) had monopolized the market for downhill skiing services in Aspen, Colorado. The question presented is whether that finding is erroneous as a matter of law because it rests on an assumption that a firm with monopoly power has a duty to cooperate with its smaller rivals in a marketing arrangement in order to avoid violating § 2 of the Sherman Act.<sup>1</sup>

I

Aspen is a destination ski resort with a reputation for "super powder," "a wide range of runs," and an "active night life," including "some of the best restaurants in North America." Tr. 765-767. Between 1945 and 1960, private investors independently developed three major facilities for downhill skiing: Aspen Mountain (Ajax),<sup>2</sup> Aspen Highlands

<sup>1</sup>The statute provides, in relevant part:

"Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony . . . ." 15 U. S. C. § 2.

<sup>2</sup>Ski Co. developed Ajax in 1946. The runs are quite steep and primarily designed for expert or advanced intermediate skiers. The base area of Ajax is located within the village of Aspen.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

June 10, 1985

No. 84-510. Aspen Skiing Company v. Aspen  
Highlands Skiing Corp.

Dear John,

Please join me.

Sincerely,

Justice Stevens

.82 JUN 10 6 40 PM

Copies to the Conference