ADA Drive-By Lawsuits — Enforcement or Extortion?

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Guest blog post by Bob Vogel

A handful of lawyers and people with disabilities are using well intentioned ADA (The Americans With Disabilities Act) accessibility laws in several states including California and Florida to rake in huge amounts of cash by filing hundreds, and in some cases thousands, of ADA-access lawsuits. In these states it is not uncommon to read about a single person filing more than two dozen ADA-access lawsuits a week, articles often refer to these lawyers as frequent filers.

Why are ADA-access lawsuits so common in California and Florida?

Federal ADA access law says places of public accommodation (businesses) must be accessible and can be sued for access violations (such as steps but no wheelchair ramp or lack of accessible parking spot). The person filing the lawsuit must have a disability that has been affected by the violation. Under federal ADA law the person suing is entitled to recover court costs and lawyer fees and that's it. However, in an attempt to encourage better accessibility compliance, some states including California and Florida, allow for compensatory damages. For instance, in California a person can sue for at least $4,000 per violation, on top of court and lawyer fees.

The term "drive-by" lawsuits is often used to describe a person that files a great deal of ADA access lawsuits, the idea being that rather than sue a business when they run into an access problem, people filing these cases spend their time driving from town to town, business to business looking for any violation they can find to file a suit.

Armed with a list of businesses and violations from a new area, the lawyer cranks out lawsuits and sends notices to the businesses that they have been sued, usually offering to drop the lawsuit if the business settles by paying between $2,000 and $6,000, in some cases much more. Doing the math, if a lawyer files, say 12 lawsuits a week and settles on $4,000 per case, the money adds up quickly. Businesses claim this is extortion — plain and simple.

Lawyers that file these lawsuits claim they are crusaders for ADA access. The lawsuits may improve access, but at what cost to wheelchair users?

These type of drive-by lawsuits create animosity toward the ADA and leaves business owners with suspicion and mistrust of wheelchair users. I recently drove to a small industrial business park to get a car seat repaired. After I had transferred out of my car into my wheelchair my cell phone rang. As I was talking on the phone, people from surrounding businesses came out and were nervously staring at me. Weird. When I went into the seat-repair business, the owner also seemed nervous until I explained that I wanted a seat fixed— then he seemed relieved. After he fixed my seat, he apologized if he had seemed on edge when I first wheeled in and proceeded to explain that the business park owners had recently been sued because they didn't have the proper striping and signage on their accessible parking. After consulting with an attorney, they found it was cheaper to pay a demand for something like $18,000 to drop the lawsuit than go to court. They said what really made them mad is nobody recalls the person that sued their businesses ever going to any of their businesses , in fact I was the first wheelchair user they recall seeing in the business park. They also thought it was odd that there was no follow-up to see if they had fixed the parking — which they had. To them, it felt like nothing more than extortion.

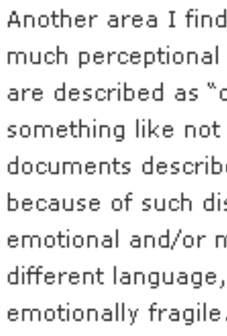
In a similar situation, I just heard from a friend that runs a spinal cord injury support group in Pollock Pines — a small, tight-knit community in the California foothills. She said a notorious ADA drive-by attorney had recently papered their town with ADA access lawsuits that ended up costing local businesses a huge sum of money to have dropped. It also forced three small businesses to close permanently. The lawsuits left an atmosphere of alienation toward wheelchair users. The support group has taken it upon themselves to organize a handcycle/bike ride for wheelchair users and non-disabled riders to create an opportunity for positive interaction to try and get back the community and understanding that was there before the lawsuits.

There are non-disabled lawyers that see the dollar signs in this area and recruit people with disabilities to file ADA lawsuits. A website for one such attorney reads "Confined to a wheelchair in California? You may be entitled to $4,000 each time you can't use something at a business because of your disability." One of the examples of access violation the site provides is, a mirror in a restroom that is too high to use. If so, the site says, "You may be entitled to $4,0000!" The way the law is currently written, even if a business fixes the violation right away, the person filing the suit has already been harmed by the violation and can still sue and no warning is required.

Another area I find troubling is the way these lawsuits are worded for the court. The wording does as much perceptional damage to the image of wheelchair users as the worst telethon. Wheelchair users are described as "confined to a wheelchair," and if you are suing because of an access violation — something like not being able to use a bathroom mirror, or lack of proper signage — the court documents describe things such as "Plaintiff [wheelchair user] suffers emotional and/or mental distress because of such discrimination…" Really? Lack of access sucks, but does somebody really suffer emotional and/or mental distress because they can't use a mirror? While I understand legalese is a different language, but still, according, to these lawsuits, wheelchair users must be extremely emotionally fragile.

A good friend of mine argues that the ADA has been around since 1990 and businesses should know better, and should have changed by now. She also argues that California and Florida have the highest level of accessibility, and perhaps this is because of the compensatory lawsuits, and I agree to a point. The problem with the argument is that when it comes to collecting money on ADA access grounds, everything is technically the same. If a business has stairs and refuses to put in a ramp or refuses to provide accessible parking, I'm all for a lawsuit if that is the only avenue. But let's say a business has a van accessible parking spot out in front — well-marked crosshatch space for the lift, accessible levers on their doors, fully accessible bathroom, but they forget to put a sign on the bathroom that says it is accessible, or the access sign is the wrong color. The business is still liable for an ADA lawsuit and pursuant shakedown.

What do you think? Are these lawyers doing the dirty work for us? Is the access worth it? Or are these lawsuits doing more harm than good?



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Tags: ADA, ADA compliance, ADA lawsuits, Americans with Disabilities Act, Bob Vogel, California, disability compliance, Florida, roho cushion, ROHO Inc., The Roho Group

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- February 2013
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- December 2012
- November 2012
- October 2012
- September 2012
- August 2012
- July 2012
- June 2012
- May 2012
- April 2012
- March 2012
- February 2012
- January 2012
- December 2011
- November 2011
- October 2011
- September 2011
- July 2011
- June 2011
- May 2011
- April 2011
- March 2011
- December 2010
- November 2010
- October 2010
- September 2010
- August 2010
- July 2010
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- February 2010
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