

Client Alert

September 2016

Plaintiffs' Law Firm Again Targeting Community Banks

A Pittsburgh law firm has recently trained its sights again on community banks. This same law firm previously filed a number of class-action lawsuits against community banks: first, for alleged violations of the ATM fee-disclosure requirements in the Electronic Funds Transfer Act and, more recently, for alleged violations of the Americans with Disabilities Act (ADA) with regard to ATM-accessibility by disabled customers. In its latest attack on community banks, the law firm is sending demand letters to banks threatening litigation over the banks' websites. The law firm contends the banks' websites do not comply with the ADA because they allegedly are not accessible by disabled patrons.

ADA website-accessibility standards have not been issued by the federal government. In 2010, the US Department of Justice (DOJ) announced that was considering issuing regulations applying the ADA to websites. Originally, it was expected that DOJ would issue website-accessibility standards for places of public accommodation by the spring of 2014,¹ but the DOJ has now delayed issuing those regulations until 2018.

Many have anticipated that ADA website-accessibility rules, if and when they are issued, will resemble the standards set forth in the Web Content Accessibility Guidelines (WCAG), which are promulgated by the Web Accessibility Initiative (WAI) of the World Wide Web Consortium.² As described by the DOJ, the "WAI has created recognized voluntary international guidelines for Web accessibility" which "detail how to make Web content accessible to individuals with disabilities."

The fact that there are no ADA rules and regulations currently governing website accessibility, however, has not stopped aggressive plaintiffs' lawyers from filing lawsuits or threatening litigation based on allegedly inaccessible websites. Many of these lawsuits seize on technical violations and seek injunctive relief, damages under state public accommodations laws, and attorney's fees. These lawsuits first gained traction based on a federal court class action lawsuit filed in California against Target Corporation, where the court held that portions of Target's website had a "nexus" to physical stores and were covered by the ADA. Since that lawsuit settled in 2008, a number of retailers, banking institutions and hospitality providers have settled lawsuits or threatened lawsuits and brought their websites into compliance with the voluntary WAI guidelines.

The DOJ entered the fray by requiring, among other entities, a convenience store and gasoline retailer chain and a hotel and resort chain in consent decrees to initiate programs that will improve accessibility to their websites, which includes website modifications to comply with version 2.0 of the WAI guidelines.³ Both of these consent decrees arose from investigations into accessibility issues at their physical facilities—gasoline station parking lots and convenience stores, and hotel rooms. Nevertheless, during the course of the investigations, the DOJ found website-accessibility issues and ordered modifications. Under these consent decrees, for instance, the places of public accommodation were required to make certain changes to their websites, including some combinations of the following:

¹ See Hunton & Williams Client Alert: "[Federal Website Accessibility Requirements for Places of Public Accommodation Expected in the Next Six Months](#)" (December 2013).

² Version 2 of the WAI's web accessibility guidelines can be viewed at <http://www.w3.org/TR/WCAG20/>.

³ See Hunton & Williams HELP Blog Entry: "[Five Reasons Why Businesses Should Take Steps Now To Make Their Websites Accessible](#)" (March 2015).

- Provide text alternatives for photographs, charts, graphics so they can be changed into usable formats, such as large print or Braille, for visually impaired users;
- Make videos accessible via text and sequencing;
- Minimize use of blinking and flashing;
- Provide documents in text-based, not image based, formats for ease of reading;
- Provide alternatives to time-based media;
- Provide a second static copy of page where auto-refresh or timed response required;
- Provide keyboard-accessible content;
- Provide a navigable site;
- Add a “Skip Navigation” link; and
- Provide screen reading software.

Despite the lack of formal ADA website-accessibility requirements from the DOJ, the combination of recent DOJ settlements and the DOJ’s statements in its settlements and press releases make clear that the DOJ does not view its own inaction in promulgating regulations as an impediment to bringing enforcement actions against public accommodations with websites that are inaccessible to blind patrons. Moreover, given the combination of the DOJ’s public endorsement of WCAG 2.0 standards, the DOJ’s own enforcement actions and investigations, and the growing number of lawsuits and threatened lawsuits from plaintiffs’ attorneys, we believe places of public accommodation should take a proactive look at website-accessibility issues and take steps to protect themselves in light of potential litigation — including possible class litigation — from private individuals and disabled advocacy groups. These efforts should include: (1) making sure that access to physical facilities is compliant with federal, state and local accessibility laws and codes; (2) reviewing the WAI’s accessibility guidelines and assessing website compliance; and (3) having experienced accessibility defense counsel assist with advice to remediate problems and either preempt or, alternatively, respond to website accessibility demands and lawsuits quickly and efficiently.

Hunton & Williams LLP attorneys have represented community banks, major retailers, restaurants and other businesses in lawsuits brought by this same law firm and other plaintiffs’ firms for alleged violations of the ADA. We have successfully resolved many of these claims and believe that our strategies for the defense and resolution of these prior suits will be of value to our clients in dealing with this latest attack on community banks.

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