

SERIAL PLAINTIFFS

THE ABUSE OF ADA TITLE III

AN IN-DEPTH LOOK AT HOW
PLAINTIFFS' LAWYERS EXPLOIT
A LAW WITH GOOD INTENTIONS

A LAWSUIT REFORM ALLIANCE
OF NEW YORK REPORT





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Serial Plaintiffs: The Abuse of ADA Title III, Report March 2018

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ADA LAWSUIT ABUSE THE CASE OF THE SERIAL PLAINTIFFS



THE LAW

First enacted in 1990, the goal of the Federal Americans with Disabilities Act is to provide people with disabilities with equal opportunity, full participation, independent living and economic self-sufficiency.



THE PROBLEM

- The law attracts lawsuits as it allows attorneys to collect fees
- The Department of Justice has delayed in clarifying the law
- Lawsuits can be brought with no notice of alleged violations
- Lawsuits are costly and lawyers seek settlements, not accessibility

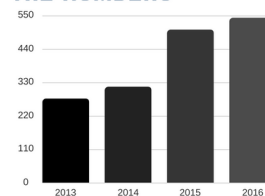


THE SERIAL LITIGANT

- Represented by profit seeking lawyers, a portion of which may be shared with the plaintiff
- Involved in lawsuits against multiple entities at a time
- "Drive-by" litigation - filing the same suit at multiple locations without entering establishments

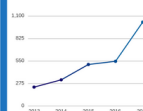
THE NUMBERS

The Number of ADA Title III Lawsuits Filed in New York Has Increased Each Year



IN 2017 ALONE

1023 ADA Title III lawsuits were filed in New York in 2017 by more than 170 plaintiffs.



ADA Title III

The Americans with Disabilities Act (ADA) was signed into law by President George H.W. Bush in 1990. The intended goal of the ADA was to provide individuals with disabilities with equal opportunity, participation, independence and economic self-sufficiency. All businesses that provide goods and services to the public are considered places of “public accommodation” and are therefore required to construct or adjust their physical space, as well as policies and procedures, so that individuals with disabilities have the same access to the facility as individuals without disabilities¹.

The ADA was designed to stimulate state economies, by increasing the purchasing power of disabled individuals, while enriching their lives due to an increase in participation and productivity². For many states, including New York, this dual benefit has not been realized. The ADA has created costly challenges for New York State and elsewhere in the U.S. There are a number of “frequent-flyer” serial litigants and law firms that specialize in filing these “drive-by” lawsuits. Some states have become particularly vulnerable to ADA-related litigation, because they have enacted laws that allow for the collection of damage awards, beyond just the attorney’s fees, if ADA violations are proven.



The Problem

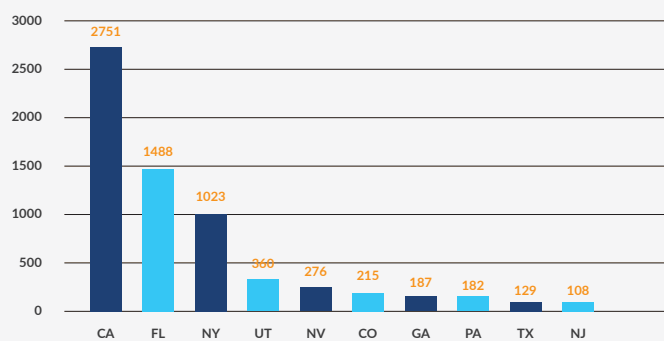
Federal ADA guidelines are very specific, with hundreds of alterations required for established public spaces and requirements for new construction. The guidelines are well intended, giving individuals with disabilities a great deal of independence and utmost participation in society. Plaintiffs’ lawyers, however, have discovered that these incredibly specific guidelines can be used for financial, rather than social, gain. Businesses, particularly small independently owned business, are vulnerable to lawsuits filed under the ADA because they have less income to spend on making ADA alterations to their spaces and more importantly in the case of serial plaintiffs, less to spend on legal counsel. There is also no true consistency in enforcement, lawsuits are brought without prior notice, and ADA guidelines can change with little or no notice.

¹<https://ag.ny.gov/civil-rights/disability-rights>

²Torres, National Institute on Disability and Rehabilitation Research, 1992

Under Federal law, Title III of the ADA does not give individuals the right to sue for monetary damages for public space claims, but critically allows attorneys to recover fees. In California, Florida and New York, the civil rights laws allow individuals with disabilities to file claims seeking monetary awards in addition to legal fees³. The damages recouped for these lawsuits for disabled individuals is typically a modest amount, which lends itself to the practice of plaintiffs and their lawyers filing multiple lawsuits, sometimes several per day. Attorneys Ben Zion Bradley Weitz and Adam Shore worked in tandem to represent Zoltan Hirsch and were asking to recoup \$425 per hour in legal fees for what has essentially become a cookie-cutter lawsuit, meaning that once the first suit was filed, the same language is used over and over again, with only the names changed⁴.

TOP 10 STATES FOR ADA TITLE III FEDERAL LAWSUITS IN 2017



ADA compliance is costly for businesses, and so are ADA lawsuits. Very few ADA Title III lawsuits go to trial. Businesses pay-out an average of \$16,000 per settlement⁵. A small business may generate less than \$100,000 per year in income⁶. According to James Link, a civil litigation attorney, “The lawsuits are filed to settle them. They have never been about taking a case to trial, and frankly most people can’t afford to take a case to trial. So they are going to settle, and that’s how they [Plaintiffs’ attorneys] make their money. They don’t make their money on trials⁷”.

“The lawsuits are filed to settle them. They have never been about taking a case to trial...”

ADA lawsuits are on the rise in New York State as lawyers are recognizing that they can turn a profit with little effort⁸. The number of individuals living in New York, and across the United States with disabilities is also on the rise⁹.

³Copeland, James, Trial Lawyers Inc.: Wheels of Fortune Update. (November 12, 2014). Available at <https://www.manhattan-institute.org/html/wheels-fortune-report-litigation-industrys-disability-practice-5973.html>

⁴Secret, Mosi. The New York Times. Judge Rebukes 2 Lawyers Profiting From U.S. Disability Law. (March 29, 2013). Available at <http://www.nytimes.com/2013/03/30/nyregion/judge-rebukes-lawyers-profiting-from-us-disability-law.html>

⁵Barnes, Ken. Forbes, The ADA Lawsuit Contagion Sweeping U.S. States (December 22, 2016) Available at <https://www.forbes.com/sites/realspin/2016/12/22/the-ada-lawsuit-contagion-sweeping-u-s-states/#7982010a34ee>

⁶Barnes, Ken. Forbes, The ADA Lawsuit Contagion Sweeping U.S. States (December 22, 2016) Available at <https://www.forbes.com/sites/realspin/2016/12/22/the-ada-lawsuit-contagion-sweeping-u-s-states/#7982010a34ee>

⁷Rugged Entertainment. Wheels of Fortune Screener. 2012. Available at <https://vimeo.com/40696493>

⁸Launey, Kristina M., Ryan, Susan, Vu, Minh N. ADA Title III Lawsuits Increase by 37% in 2016. Available at <http://www.adatitleiii.com/2017/01/ada-title-iii-lawsuits-increase-by-37-percent-in-2016/>

⁹Kim, Woody G., Stonesifer III, Henry Wade. Toward Creating a Framework to Accommodate the Needs of Disabled Hotel Guests. (January 8, 2011) Available at http://scholarworks.umass.edu/gradconf_hospitality/2011/Presentation/39/

The Serial Plaintiff

WANTED

PLAINTIFFS FOR HIRE

As reported by the New York Times, it is common practice for an attorney to locate a business with alleged compliance issues and then “aggressively recruit plaintiffs.” Typically, plaintiffs collect \$500 per suit while the lawyers average \$16,000 per suit in legal fees.

In the article, Long Island attorney Michael Coleman says “As a private attorney, every lawsuit that I file is to make money, because that’s how I make a living.”

Serial plaintiffs’ goal is not to assist others with disabilities by enforcing businesses to follow ADA guidelines; they are looking to make money. They often file multiple suits at one time, or over a period of time. For some, their lives revolve around being engaged in litigation and they are often not deterred by negative outcomes. Often times, they file cases that are trivial, unfounded, and not based upon factual merit. Serial plaintiffs are usually represented by one lawyer who is not representing them to uphold the spirit of the ADA, but rather using the ADA as a primary source of income. For example, Ben Zion Bradley Weitz, made roughly \$7,970,000 in legal fees, utilizing only eight serial plaintiffs between 2010 and 2017. This does not account for income that he derived from other ADA Title III lawsuits that he filed for non-serial plaintiffs¹⁰. Plaintiffs in these cases typically get \$500.00¹¹.

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¹⁰Based upon Forbes article stating that the average ADA Title III settlement is \$16,000, multiplied by the number of suits filed. Barnes, Ken. Forbes. The ADA Lawsuit Contagion Sweeping U.S. States (December 22,2016) Available at <https://www.forbes.com/sites/realspin/2016/12/22/the-ada-lawsuit-contagion-sweeping-u-s-states/#7982010a34ee>

¹¹Secret, Mosi. The New York Times. Disabilities Act Prompts Flood of Suits Some Cite as Unfair. April 16, 2012. Available at <http://www.nytimes.com/2012/04/17/nyregion/lawyers-find-obstacles-to-the-disabled-then-find-plaintiffs.html>

ADVOCATES OR FRONT GROUPS?

As is the case with lawyer Tara Demetriades of ADA Accessibility Access, Inc and Lawrence Fuller and Keith Harris of The Independence Project, Inc., plaintiff's lawyers often appear to represent an advocacy group. These organizations essentially turn out to be "lawsuit mills" for serially filing lawsuits under the ADA.

No Plaintiff? No Problem!

In 2010, attorneys Adam Shore and Ben Zion Bradley Weitz filed a lawsuit against a Subway restaurant in Brooklyn on behalf of a man named Mike Costello. These two attorneys have a reputation for filing what the judge called "boilerplate lawsuits." The plaintiff, Mr. Costello, never appeared in court.

The complaint stated that the restaurant's bathroom was not compliant. The Subway didn't even have a bathroom.

In the end, Judge Johnson dismissed the suit barring the attorneys from collecting fees. "More troublesome is the fact that the court's best efforts have failed to prove that an individual names 'Mike Costello' exists, is wheelchair-bound and has visited any of those establishments," he wrote in his opinion.

Other States Measures

Many states have recognized the growing problem of ADA litigation and have passed laws to address the issue without compromising the underlying goals of the ADA.

California, like New York, is especially vulnerable to ADA Title III lawsuits because of its state laws. For many years California attempted to pass legislation to curb the abuse of

ADA lawsuits, to no avail due to the fact that members of the Legislature were being by Plaintiffs' Attorneys dollars. Former Los Angeles Superior Court Judge Brett Klein stated "With these wheelchair cases, when we first started seeing them in the Courthouse, it wasn't obvious that someone had invented a new way of doing business. It took a while to realize that, and then we started seeing the same names of lawyers over and over again and the same names of plaintiffs¹²".

In recent years, however, California legislators fighting to stop ADA abuse have seen more success. In 2015, California passed a bill that tracks plaintiffs who frequently file ADA lawsuits and charges them an additional court filing fee of \$1,000. In 2016, California passed another bill that makes small businesses with 50 or fewer employees exempt from the requisite \$4,000 in damages to plaintiffs¹³.

In 2016, Minnesota passed a bill that provides defenses for businesses being sued for ADA violations. To file a lawsuit, the plaintiff or plaintiffs' lawyer must send the business in question a letter, clearly mapping out the violations and alterations that need to be made before the lawsuit can commence. The plaintiff or lawyer sending the letter must include the specific violation and can't demand money¹⁴.

In 2017, Florida passed a bill that gives business owners the ability to fight back against ADA Title III lawsuits by allowing them to voluntarily hire a qualified ADA expert. That expert would create a plan to fix any ADA violations on the premises within a reasonable period of time. If the business owner is then sued for an ADA violation, they could file the ADA experts plan in court letting the judge know they are aware of the issues and are working on fixing the issues¹⁵.

In April 2017, Arizona passed a bill that would allow for a thirty-day grace period to develop a plan of action to the plaintiff and to the proper government entity¹⁶. In 2016 Nevada Attorney General stepped in and aided in the dismissal of 1700 ADA lawsuits brought against businesses in Arizona¹⁷.

"With these wheelchair cases, when we first started seeing them in the Courthouse, it wasn't obvious that someone had invented a new way of doing business."

¹²Rugged Entertainment. Wheels of Fortune Screener. 2012. Available at <https://vimeo.com/40696493>

¹³Santos Vazquez, Jinouth and Villamore, Myra. Latest California ADA Lawsuit Reform Attempt "Watered Down Solution". (May 25, 2016). Available at <http://www.adatitleiii.com/2016/05/latest-california-ada-lawsuit-reform-attempt-watered-down-solution/>

¹⁴Cooney, Tory. New Minnesota Law Targets What Critics call 'Excessive' ADA Lawsuits. (May 30, 2016). Available at <http://www.twincities.com/2016/05/30/new-minnesota-law-targets-what-critics-call-excessive-ada-lawsuits/>

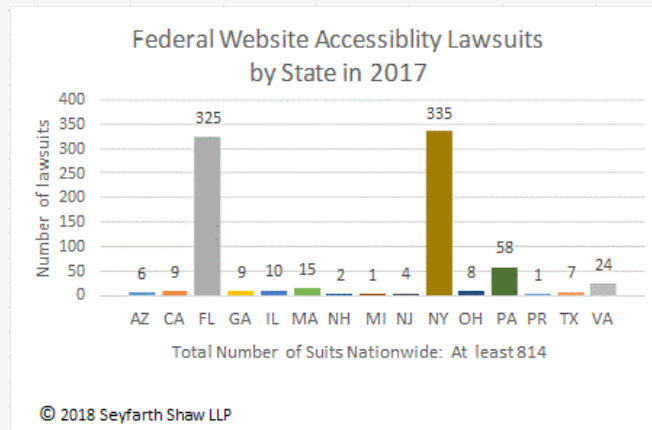
¹⁵LaGrone, Katie. Florida Lawmakers Pass law Aimed at Crippling ADA Lawsuit Abuse. (May 4, 2017). Available at <http://www.wptv.com/news/local-news/investigations/florida-lawmakers-pass-law-aimed-at-crippling-ada-lawsuits>

¹⁶Associated Press. Serial ADA Lawsuits Update: Arizona Legislature Approved bill Limiting Disability Lawsuits. (April 18, 2017) Available at <http://www.abc15.com/news/state/serial-ada-lawsuits-update-arizona-legislature-approved-bill-limiting-disability-lawsuits>

¹⁷Seyfarth Shaw, LLP. Nevada Attorney General Takes Dramatic Action to Stop Serial Plaintiff's ADA Title III Lawsuits. (August 11, 2017). Available at <http://www.adatitleiii.com/2017/08/nevada-attorney-general-takes-dramatic-action-to-stop-serial-plaintiffs-ada-title-iii-lawsuits/>

The Wave of the Future

Many businesses are unaware that their websites can be included under ADA Title III guidelines, until they have already been sued. The problem with website accessibility is that Courts have decided that website accessibility falls under ADA Title III guidelines, but they and the Department of Justice have yet to establish any clear-cut rules as to how a business must alter or design their websites to be in full compliance¹⁸.



So far in 2017 there have been 231 ADA Title III lawsuits filed regarding website accessibility in New York. Lawyer Anne Seelig, of the Lee Litigation Group, PLLC, is responsible for filing 42 of those lawsuits for only three plaintiffs. Jeffrey Gottlieb, another lawyer, based in California, has filed 47 website accessibility lawsuits on behalf of only two plaintiffs¹⁹. These lawsuits will continue to increase as more lawyers recognize that these lawsuits are a goldmine due to the lack of concrete guidelines.

**A BLURRED VISION:
WINN DIXIE
AND
WEBSITE
ACCOMMODATION**

Following a Florida federal judge's decision in *Gil v Winn Dixie* to extend the ADA to websites that are heavily integrated with a business' physical space, New York Eastern District Judge Jack Weinstein ruled in *Andrews v Blick Art Materials* that website compliance does not need to rely on a "physical nexus" and that websites should be considered "places of public accommodation" on their own. Together, **these decisions have opened the flood gates for new litigation.**

¹⁸Fickenscher, Lisa. Judges Expand ADA Rule to Include More Websites. (August 17, 2017). Available at <http://nypost.com/2017/08/14/judges-expand-ada-rule-to-include-more-websites/>

¹⁹All information available at <https://westlaw.com>. Subscription required.

Moving Forward

The legislative changes made in other states to address ADA Title III abuse have been quite recent, so there is no clear indication of whether or not one change was more successful than another at this time. Be that as it may, New York State's small businesses cannot afford to allow this abuse to continue. New York would benefit from implementing the following changes:



- Notice and cure provisions, similar to the changes made in Arizona.
- Government certification of businesses, with subsequent inspection and enforcement.
- Capping of damages to plaintiffs to \$1000
- Capping of reimbursement of lawyers' fees
- Required Annual reviews by the Attorney General for the law firms filing the most ADA Title III lawsuits.

Currently, there is a bill before Congress, the ADA Education and Reform Act of 2017 (HR 620). The bill proposes that the Department of Justice provides more thoroughly educate states and business owners on how to comply with ADA guidelines. It would also require that plaintiffs notify businesses in writing of alleged compliance issues before a lawsuit can be commenced. The business would then have sixty days to respond with a written plan of action, and 120 more days to complete the plan. If the plan is not completed, the plaintiff could then sue the business in question²⁰.

Attempts to reform Title III of the ADA have historically been opposed due to the fact that activists perceive reform measures as violating the rights of individuals with disabilities. The ADA guidelines were put in place with good intention: to provide access, independence and productivity to the lives of individuals with disabilities. Unfortunately, plaintiffs' lawyers have abused these well-intentioned provisions to create a litigation climate that is costly to business owners and taxpayers alike.

¹⁸Available at <https://www.congress.gov/bill/115th-congress/house-bill/620>

ADDENDUM

Title III Serial Plaintiffs as of September 1, 2017

PLAINTIFF	LAWSUITS	TIME PERIOD	LAWYER
ZOLTAN HIRSCH	185	2010-2017	BEN-ZION BRADLEY WEITZ
LAWRENCE FELTZEN	86	2014-2017	LAWRENCE FULLER AND KEITH HARRIS
LUIGI GIOTTO	78	2012-2017	BEN-ZION BRADLEY WEITZ
GRACIELA DON- COUSE	77	2014-2017	BRADLY MARKS
FREDKIEY HURLEY	75	2014-2017	TARA DEMETRIADES
MIKE COSTELLO	64	2010-2013	BEN-ZION BRADLEY WEITZ AND ADAM SHORE
KIRAN VUPPALA	62	2015-2017	BEN-ZION BRADLEY WEITZ
JERRY CANKAT	49	2010-2017	TARA DEMETRIADES
PEDRO FONTANES	48	2016-2017	ISMAIL SINAN SEKENDIZ
HELEN SWARTZ	44	2015-2017	LAWRENCE FULLER
TODD KREISLER	40	2010-2017	PARKER HANSKI, LLP., BEN-ZION BRADLEY WEITZ, AND ADAM SHORE
JOSEPH PARETEAU	34	2014-2017	BEN-ZION BRADLEY WEITZ
LINDA SLONE	33	2010-2017	BEN-ZION BRADLEY WEITZ
NAMEL NORRIS	25	2010-2017	BEN-ZION BRADLEY WEITZ
NAUQONE TAYLOR	23	2015	TARA DEMETRIADES
STEVEN MATZURA	22	2017	JUSTIN ZELLER AND JEFFREY GOTTLIEB
CHRISTOPHER O'RO- URKE	22	2017	BRADLY MARKS
CARR MASSI	21	2010-2016	ADAM SHORE, JAMES BAHAMONDE, AND MARTIN COLEMAN
DEDRA DE LA ROSA	21	2011-2017	PARKER HANSKI
ASHLEY FRANCIS	20	2014-2017	PARKER HANSKI
LAWRENCE YOUNG	20	2017	DOUGLAS LIPSKY AND JEFFREY GOTTLIEB
JOYCE DE LA ROSA	19	2011-2017	PARKER HANSKI
RICHARDO VELAS- QUEZ	17	2015-2017	BEN-ZION BRADLEY WEITZ
DERRICK ANDERSON	17	2017	ANNE SEELIG
TERELL THOMAS	17	2012-2015	PARKER HANSKI
DAN GROPPER	15	2013-2017	PARKER HANSKI
VICTOR ANDREWS	14	2017	ANNE SEELIG
BRYAN WILLIAMS	12	2017	LAWRENCE FULLER AND KEITH HARRIS
KING RANGE	12	2014-2017	PARKER HANSKI
KIM YANCY	10	2013-2017	DONALD WEISS
IONE LEWIS	10	2014-2017	DONALD WEISS AND FREDERIC ROSEN- GARTEN