Court Permits Website Accessibility Lawsuit Against Hooters To Proceed

Insights
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A federal appeals court just breathed new life into a disability access lawsuit filed against restaurant chain Hooters, permitting a blind plaintiff who claims he could not access the company's business website to proceed with his ADA claim—despite the fact that the company was in the midst of fixing its website at the time the lawsuit was filed. The decision from earlier this week should be a wake-up call to all businesses with websites accessible to the public, serving as a reminder to ensure their sites are ADA-compliant (*Haynes v. Hooters of America*).

Blind Website Visitor Files Suit Against Restaurant
Because Florida resident Dennis Haynes is blind, he uses screen reader software to access the internet. In early 2017, he attempted to read and navigate the website for Hooters, a national restaurant chain. However, because the company's website was not compatible with screen reader software, he says he could not do so.

In April 2017, he filed a federal lawsuit against the company alleging a violation of Title III of the Americans with Disabilities Act (ADA). That section of the law requires businesses that provide services open to the public to ensure that those services are accessible to all individuals, including those with disabilities. The law has recently been interpreted to apply to websites just as it does to physical stores, restaurants, shops, offices, and other brick-and-mortar places of business. His lawsuit asked the court to order Hooters to alter its website to make it fully accessible, and also to direct Hooters to continually update and maintain its website to remain usable by visually impaired visitors.

Hooters was well aware of the accessibility problem. That's because, a year earlier, a different plaintiff filed a lawsuit nearly identical to the one Haynes brought. Hooters quickly negotiated a settlement of that first lawsuit in which the company agreed to improve access on its website within 12 months to conform with the Web Content Accessibility Guidelines (WCAG) 2.0—the recognized industry standard for website accessibility.

Hooters raised this settlement agreement as a defense to Haynes' lawsuit, arguing that it was in the process of actively implementing a comprehensive remediation plan for its website and therefore should not be subject to Haynes' similar claims. The trial court agreed with Hooters' argument and dismissed the case, saying there was no live controversy. It pointed out that the very same relief

Haynes was seeking was already in the process of being implemented by Hooters. Haynes filed an appeal with the 11th Circuit Court of Appeals, which disagreed with this line of thinking and revived the lawsuit.

Appeals Court Resurrects Lawsuit

The court of appeals was not impressed with the settlement agreement in the separate case and concluded that it did not block Haynes' lawsuit. Its June 19 opinion plainly states: "Hooters' assurance to an unrelated third party to remediate its website does not alone moot Haynes' claims for relief."

The 11th Circuit Court—which hears cases arising out of Florida, Georgia, and Alabama—noted that there was nothing in the record to factually demonstrate that the website was being actively updated. Even if there was, the court said, there were certain things Haynes asked for in his lawsuit that could not be provided through the private settlement of a separate but similar lawsuit. For one thing, Haynes asked the court to order Hooters to continually update and maintain its website to ensure it remained fully accessible. Nothing in the settlement agreement provided such assurances.

The court then vacated the lower court's decision and sent it back to that trial court for further proceedings. If the parties cannot reach an agreement or if this case is not dismissed on other grounds, Haynes will have an opportunity to present his case at trial.

What Does This Mean For Other Businesses?

This decision should cause businesses to reassess compliance efforts when it comes to website accessibility standards. Especially those businesses with operations in Florida, Georgia, or Alabama should realize this decision means you cannot simply wait to get threatened with a lawsuit, or even served with a formal claim, before taking action. Plaintiffs can use this decision to argue that your actions alone in implementing a remediation plan to fix an inaccessible website after being slapped with a demand letter or lawsuit might not be enough to allow you to escape liability.

Instead, a better course of action would be to proactively work to ensure your website meets legal compliance standards before a legal situation develops. You can start by following the standards set by the WCAG, which provides web designers with criteria for making digital content more accessible to those with disabilities.

If your company website posts menus, accepts orders, permits customer reviews and testimonials, takes reservations, provides addresses and directions to brick-and-mortar locations, accepts job applications, includes FAQs, has email or chat features, or has any other online presence, you should consult with your web designer about ways to make these aspects accessible to those with disabilities.

Remember, it's not just visual impairments that need to be considered when making your website compliant with the law. Some of the more common website accessibility issues affect individuals with hearing impairments and those who are unable to use a mouse and must navigate with a keyboard, touchscreen, or voice recognition software. For those with hearing impairments, the issue

is often that audio content on the website does not include closed captioning, or that images do not include captions. You may need to build your website to properly interact with any adaptive software or technology designed for accessibility purposes.

If you have any questions, contact the author or your Fisher Phillips attorney.

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