Ninth Circuit Issues Sweeping New Ruling Expanding The Scope Of Disabled Individuals’ Standing To Challenge The Architectural Barriers Of A Public Accommodation Under The Americans With Disabilities Act

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Ringing in the new year with a major decision interpreting the Americans with Disabilities Act (ADA), an en banc panel of the United States Court of Appeals for the Ninth Circuit in Chapman v. Pier 1 Imps. (U.S.), Inc., 2011 U.S. App. LEXIS 453 (9th Cir. Jan. 7, 2011) has held that a disabled plaintiff encountering a single discriminatory barrier to access at a place of public accommodation may file a lawsuit seeking removal of all discriminatory barriers that “relate” to his disability – even those he did not personally encounter. Furthermore, the court ruled that ADA plaintiffs may file such suits even if the discriminatory barrier has not deterred them from returning again. Instead, such parties need only assert that they encountered a discriminatory barrier, that they intend to return to the public accommodation in the future and that they face a “real and immediate threat of repeated injury” on a follow up visit.

This decision thereby greatly expands the liability risk for businesses that are public accommodations under the ADA by broadening the types of plaintiffs who may sue and the types of barriers they may challenge in court. But a careful reading of the case sheds light on potentially creative arguments that public accommodations can use to guard against the increased risk of liability the case imposes, and highlights the need to be proactive in meeting one’s ADA obligations before the specter of a lawsuit appears.

The Legal And Factual Backdrop

The ADA prohibits discrimination by places of public accommodation against disabled individuals. A diverse range of businesses qualify as public accommodations, including hotels, establishments serving food or drink, places of exhibition or entertainment, sales or rental establishments, service establishments like laundromats and gas stations, places of public display or collection like museums, places of public recreation like parks and places of exercise like gyms and golf courses. The ADA defines discrimination to include barriers that inter-
fere with the “full and equal enjoyment” of such facilities, such as architectural barriers to access. To enforce the ADA, the statute gives private litigants the right to sue in federal court for violations of the law.

But there is a catch: ADA plaintiffs must have “standing” to sue, meaning that they have (1) suffered an injury in fact (2) from a public accommodation’s violation of the ADA (3) that the court can redress. Unlike most statutes, the ADA does not allow these “private attorneys general” to recover monetary damages, limiting them to an injunction ordering the removal of the identified barriers and attorney’s fees.

The plaintiff, who is wheelchair bound, sued Pier One for allegedly violating the ADA by failing to remove certain identified barriers to access. In his complaint, the plaintiff went beyond the barriers he personally encountered, additionally seeking injunctive relief to remove a number of other barriers that he had not personally experienced. Also, the plaintiff made it clear that the barriers to access would not deter him from returning to the Pier One store in the future.

These two sets of allegations set the stage for the legal issue the parties raised on summary judgment: whether the plaintiff had standing under the ADA. Pier One argued that the case should be dismissed because the ADA requires a disabled individual to be deterred from returning to a public accommodation before filing suit and the plaintiff readily faced on his visit. The court clarified that individual barriers to access are not separate, discrete injuries under the ADA, but a single injury: discrimination against disabled individuals in the full and equal enjoyment of a public accommodation. The statutory remedy for discrimination is removal of discriminatory barriers, including those that he is reasonably likely to face on future visits because they present a real and imminent prospect of future discrimination.

How Businesses Can Defend Against A Chapman Plaintiff

To some degree, the Ninth Circuit’s holding in Chapman paints an alarming picture of future litigation risk for public accommodations. The decision allows individuals to sue even if the alleged barriers would not affect their desire and ability to return in the future. And once a single ADA violation gives litigants entrée into federal court via standing, Chapman grants them expansive authority to challenge a broader array of alleged barriers, including those that the disabled individual did not experience and may not have even known about during his visit.

How can businesses cope with the potential onslaught of damaging litigation resulting from this decision? Chapman suggests several litigation strategies that can spare public accommodations from having to defend costly litigation all the way to judgment. First, plaintiffs can only raise those barriers that “relate” to their particular disability, regardless of whether they encountered them or not. Second, the “intent to return” requirement is no hollow shell, as the court made it clear that the plaintiff lacks standing “if he is indifferent to returning to the [public accommodation] or if his alleged intent to return is not genuine.” Third, ADA plaintiffs cannot challenge barriers “that the plaintiff is not reasonably likely to encounter, such as those in areas off limits to customers, or barriers in areas he is unlikely to enter, such as ladies’ restrooms or employee work areas.” Finally, plaintiffs must specifically allege at least one barrier they actually encountered because standing requires some past injury in fact.

This indicates that a public accommodation defending against similar allegations should evaluate whether a barrier relates to this litigant’s disability, whether he has a genuine desire to visit again, whether the barrier is in a location that the litigant is reasonably likely to encounter and whether a plaintiff has identified a specific barrier he came upon in the past. Chapman itself illustrates the value of such arguments. While the plaintiff won the en banc panel’s agreement on his legal arguments, the en banc panel ultimately ordered that the case should be dismissed because he failed to make sufficient factual allegations to sustain his claim: he alleged that the identified barriers either denied him access or would deny access, without specifying a single barrier that had in reality affected him personally. Further, the plaintiff failed to explain how the alleged barriers related to his disability. Thus, what the court gave the plaintiff with one hand by taking a liberal concept of standing, it took away with the other by concluding that he had failed to meet even this broad standard.

The Best Defense...

But a litigant who has to resort to such strategies has already lost half the battle: avoiding costly and needless litigation in the first place. A public accommodation’s best strategy for defending against such a lawsuit is not to passively wait for an aggressive plaintiff to commence litigation. Instead, businesses should aggressively evaluate in advance of litigation whether any of their architectural features could be challenged under the ADA and take steps to remedy them. Reaching out to the local disabled community also helps ward off litigation by displaying the company’s good faith efforts to comply with its access obligations – besides being good business.