

August 7, 2017

The Honorable Jeff Sessions  
Attorney General of the United States  
The United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Re: **The ADA gravy train**

Dear Attorney General Sessions:

Over the past year, plaintiffs' counsel have scoured bank and other company websites to find purported ADA violations affecting visually and hearing impaired customers. They have mailed demand letters to hundreds of community banks, claiming to represent disabled persons and/or disabled advocacy groups, alleging that the websites do not provide sufficient accessibility to the disabled. Lately, plaintiffs' firms have been directly filing claims in court without first making any demands.

Demand letters that we have reviewed assert that the banks are required to adopt an international protocol (Web Content Accessibility Guidelines version 2.0 AA) to redesign their websites at considerable cost. However, the provisions of the Americans with Disabilities Act (ADA) do not specify that this protocol is applicable. The Department of Justice (DOJ), which has jurisdiction over the administration of ADA, issued an advance notice of rule-making in 2010 making reference to the protocol, but has since removed the plan to propose a rule from its latest schedule for rule-making through 2019.

Notwithstanding the lack of any rule requiring adoption of the international protocol, Plaintiffs' law firms, relying on vague and broad language in ADA, continue to demand and sue for sometimes exorbitant attorney and related fees from community banks and others, often succeeding.

In the absence of a clear accessibility standard in the ADA or a DOJ rulemaking, the federal district courts have issued conflicting decisions concerning requirements for accessibility under the ADA.

For example, in *Robles v. Dominos Pizza LLC*, (Case No.: CV 16-06599SJO (SPx), signed 03/20/2017), the United States District Court for the Central District of California determined that imposition of the requirements of the protocol, absent a DOJ rule, violated Dominos Pizza's right to due process under the U.S. Constitution.

On the other hand, in *Gil v. Winn-Dixie Stores, Inc.* (Civil Action No. 16-23020-Civ-Scola, June 12, 2013), the United States District Court for the Southern District of Florida ruled that Winn-Dixie is required to adopt and implement a Website Accessibility Policy, and both Winn-Dixie and its service providers are required to ensure that the grocery chain's website conforms to the WCAG 2.0 standard. However, the court did not specify which version of the WCAG 2.0

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success criteria is required. There are three versions – A, AA, and AAA – each with increasing complexities and costs.

In March of this year, the American Association of Bank Directors (AABD) recommended to members of Congress that Congress amend ADA to freeze any private suits against companies, including banks, for not having proper accessibility to websites and mobile devices until DOJ proposes and adopts a rule defining exactly what is required, and allowing companies reasonable time in which to comply with the rule.

Now, AABD is also recommending to Congress that the legislation freeze any administrative or court actions of DOJ on the same matter until DOJ adopts a rule establishing a compliance standard, and allowing companies reasonable time in which to comply with the rule.

AABD is supportive of the rights of the disabled and urges its members and other bank directors to oversee an internal process that will promote the fair treatment of its disabled customers in accordance with the ADA's Congressional intent; but it is opposed to Plaintiffs' counsel exploiting vague statutory language and the lack of DOJ rule making that could clarify what companies, including banks, are required to do for their websites and mobile devices.

The United States is governed by the rule of law. If DOJ wishes to define the standard that applies to websites and mobile devices, it is authorized by Congress to do so, but in the meantime, banks and courts should not be left to guess what is required to comply with ADA. Furthermore, any standard developed by DOJ should be subject to further notice and comment rulemaking instead of a haphazard enforcement action approach.

Please join us in asking the US Congress to pass legislation that will freeze all private and DOJ actions relating to companies' websites until such time as the DOJ has proposed and adopted rules adopting a uniform accessibility standard for websites and mobile devices, and provided sufficient time for companies to comply.

Sincerely,

A handwritten signature in blue ink that reads "David Baris". The signature is written in a cursive, slightly slanted style.

David Baris  
President