Case Dismissed: Judge Rules that Plaintiff’s Pool Lift ADA Cases Have No Place in Federal Court by Martin H. Orlick, Chair, JMBM’s ADA Compliance & Defense Group

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JMBM’s ADA Defense & Compliance team takes the ADA seriously, and we recommend that our clients take a proactive approach in identifying and solving potential problems before they become lawsuits. But sometimes serial plaintiffs just go too far with claims that cannot be justified and which violate the purpose and spirit of the ADA. Today, my partner Marty Orlick talks about a recent case that offers property owners and operators some relief against this type of harassment.

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In the latest decision against an Arizona “high frequency ADA litigant”, the United States District Court for the Central District of California ruled this week that cases like Brooke vs. Perry Family Trust, et al. have no place in Federal Court.

The plaintiff, Theresa Brooke, has filed hundreds of identical ADA lawsuits against Arizona and California hotels, including a half-dozen suits last week. The plaintiff, a disabled resident of Arizona, contends that she was discriminated against by hundreds of hotel owners based on her disability. She claims that these hotels violated the 2010 ADA Standards because they fail to provide permanent pool lifts at either or both the pool and spa.

In each case, Brooke alleges she called the hotels to “inquire whether the pool or Jacuzzi had a lift or other means of access for disabled persons” and the representative informed her that it did not. Plaintiff then alleges she sent her “agent” – “an expert in ADA accessibility guidelines” – to visit the hotel, take pictures of the barriers and report back to her. Plaintiff claims she frequently visits or intends to visit the area “in the coming months and for the indefinite future” for leisure and business.

In dismissing the lawsuit, the judge found that the plaintiff failed to allege she actually visited the hotel – in fact it was clear from the complaint that she had not – and therefore did not actually encounter any barriers that discriminated against her. The Court dismissed the lawsuit, including the state law damage claims.

Plaintiff’s counsel will boast that there are no defenses to his lawsuits. However, those who oppose them are often successful. In one of our cases, the judge dismissed the lawsuit for the same reasons.

We understand it is often cheaper and easier to pay tribute to settle the lawsuits. However, for those who pursue a more
aggressive position, they can prevail. With a proper litigation strategy, these types of cases can be won. All hotel owners and operators need to know that these cases can be won without substantial cost.

If you would like to discuss any ADA issues, please contact us:

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**Martin H. Orlick** is one of the top ADA defense lawyers in the country. He has helped hotel, restaurant, retail and other commercial property owners defend more than 600 ADA cases. In addition to defending lawsuits and governmental investigations, Marty’s team of ADA specialists focuses on enterprise-wide ADA compliance and litigation prevention, including facilities, website and operational compliance. He is also a senior member of the law firm’s Global Hospitality Group®, a partner in the real estate department, and a member of the American College of Real Estate Lawyers (ACREL). For more information about ADA compliance and defense, contact Marty Orlick at 415.984.9667 or morlick@jmbm.com.

**Jim Butler** is a founding partner of JMBM, and the founder and chairman of JMBM’s Global Hospitality Group® and Chinese Investment Group™. He is recognized as one of the top hotel lawyers in the world and has authored or co-authored The HMA & Franchise Agreement Handbook, How to Buy a Hotel Handbook, The ADA Compliance and Defense Guide, and The Lenders Handbook. Jim has led the Global Hospitality Group® in more than $71 billion of hotel transactional experience, involving more than 3,800 hotel properties located around the globe. Jim’s team has also closed more than $1 billion of EB-5 financings for developer clients over the past two years. 310.201-3526 or jbutler@jmbm.com

**Other ADA defense and compliance resources**

You can access the full library of ADA materials on Hotel Law Blog by going to the home page, selecting the tab at the top that says “HOTEL LAW TOPICS”, and then clicking on “ADA Defense & Compliance” in the drop down menu . . . or by clicking here.

Below is a partial listing of articles by JMBM’s ADA Defense Lawyer team:
The ADA Compliance and Defense Guide — Free Download

ADA Defense Lawyer: New ADA standards for website accessibility

FAQs on “service animal” requirements of the ADA. What every hotelier needs to know. Why Uber was sued over service animals.

Starwood Hotels and The Phoenician get an expensive (and unnecessary) lesson in ADA compliance.

DOJ sues 3 of NYC’s top Zagat-rated restaurants for ADA violations

Charles Schwab settles claim over website accessibility

A blast against frivolous, serial ADA lawsuits in striking the right balance

New ADA compliance standards for golf courses. What do they mean to you?

How to handle an ADA lawsuit . . . and How not to do it

How a recent ADA case affects all hotels but particularly conference centers and meeting hotels

ADA Defense Lawyer Alert: Hilton’s ADA Settlement with the Department of Justice: Precedent-setting agreement delivers more than removing architectural barriers

When disabled hotel guests’ needs go beyond the norm for typical guests, what do hotel owners and managers have to do?

ADA Sweeps by U.S. Department of Justice — Coming to a theater district or Hotel near you soon? How to get ready before it’s too late.