

Arizona Judge Finds Standing is Must for Serial ADA Plaintiff, Dismisses More Than 1,100 Cases

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An Arizona judge dismissed more than 1,100 lawsuits against Arizona businesses alleging that their parking lots are not accessible to persons with disabilities. Judge David M. Talamante rejected the plaintiffs' argument that the **Arizonans with Disabilities Act (AzDA)** permits *any* person who believes a place of public accommodation has violated the act to bring a civil action.

The court found that any plaintiff in an *Arizona* court must demonstrate that it has experienced injury or harm to establish standing to sue. The court further found that these plaintiffs failed to make such a showing, since they did not allege that they ever visited or attempted to visit the businesses they sued.

In 2016, the plaintiffs filed more than 1,500 virtually identical lawsuits alleging minor, technical violations of **Title III of the Americans with Disabilities Act of 1990 (ADA)** and the AzDA, such as a lack of "van-accessible" signage or signs that are posted a few inches too low. In September of 2016, the court entered orders consolidating more than 1,100 pending cases and permitting the Arizona Attorney

General's Office to intervene as a limited purpose defendant in order to pursue dismissal of all the actions.

Prior to the February 17 oral argument, the court denied denied plaintiffs' motion to present additional briefing in light of a bill pending in the Arizona Legislature that seeks to revise the AzDA to expressly clarify that only an *aggrieved* person who believes a place of public accommodation has violated the Act may bring a civil action.

Upon granting the motion to dismiss, the court directed the Attorney General to file a proposed form of judgment, along with any motion for sanctions, attorneys' fees, and costs, within 10 days. The plaintiffs' counsel, Peter Strojnik, asked that the final judgment be entered as soon as possible, suggesting he may pursue an appeal of the dismissal on behalf of his clients. The Arizona Court of Appeals previously denied the plaintiffs' petition for special action review of an earlier order denying its motion to strike Judge Talamante from presiding over the cases brought by AID.

What Can Your Business Do?

While Judge Talamante's order brings the first round of litigation to a close, the appeals process may keep the Arizona businesses affected by these lawsuits in the court system for at least another year or two. Business owners should also note that this decision will not signal the end of these kinds of lawsuits, which remain on the rise around the country. Business owners in Arizona and other states should carefully assess their physical places of business and the way they provide their services to ensure that they comply with the ADA.

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