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Just Keep Driving: Minnesota Courts Continue to Block ADA Title III "Drive-By" Suits

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In early 2018, Minnesota federal courts issued two decisions dismissing so-called "drive-by" disability access lawsuits under Title III of the Americans with Disabilities Act (ADA). That trend has continued in 2019. In fact, in just the past two months, courts in Minnesota have dismissed, in whole or in part, no fewer than six Title III cases, again reminding business owners that liability is far from automatic in these lawsuits.

In early 2018, Minnesota federal courts issued two decisions dismissing so-called "drive-by" disability access lawsuits under Title III of the Americans with Disabilities Act (ADA). That trend has continued in 2019. In fact, in just the past two months, courts in Minnesota have dismissed, in whole or in part, no fewer than six Title III cases, again reminding business owners that liability is far from automatic in these lawsuits.

"Drive-by" lawsuits are so named for a suspected practice of plaintiffs or lawyers allegedly driving by businesses to spot visible ADA-access violations without any real intent to patronize those businesses. Finding a perceived violation, the plaintiff files suit, claiming he or she was unable to patronize the business due to the alleged violation. These cases often settle quickly because the defendants wish to avoid the associated legal expenses that can easily surpass the plaintiffs' settlement demands. But these recent decisions provide helpful guidance for those business owners who decide to defend Title III cases rather than quickly settling them.

Minnesota's Six Title III Cases

First, on July 18, 2019, the U.S. District Court for the District of Minnesota granted summary judgment based on the doctrine of standing, dismissing a Title III case. In *Dalton v. Simonson Station Stores, Inc.*, the plaintiff alleged that the defendant, a service station and convenience store in Alexandria, Minnesota, lacked an accessible entry and accessible parking spaces. Because the plaintiff sought injunctive relief, he needed to demonstrate the threat of an ongoing future injury to establish that he had standing to sue—

that is, he had to show that he intended to return to the defendant's establishment, where he would encounter the same issues. The court found no such evidence, however, because the plaintiff lived more than 100 miles from the service station, had never visited the station in the past, had only vague plans to return there in the future, and failed to establish that he traveled to the area with any frequency.

The next day, the district court dismissed part of another Title III case, *Hillesheim v. Morris-Walkers, Ltd.*, based on the doctrine of collateral estoppel. In this case, the plaintiff sued a restaurant in Belle Plaine, Minnesota, asserting numerous ADA violations. However, his lawyer had previously, but unsuccessfully, asserted one of those same violations against the restaurant in an earlier case, on behalf of another plaintiff. Therefore, in this second case, the court found that the plaintiff could not assert the same claim, based on collateral estoppel. In addition, while the plaintiff's other ADA claims survived, for now, the court dismissed the plaintiff's corresponding claims under the Minnesota Human Rights Act, because the plaintiff failed to provide pre-suit notice as required under that state law.

Next, on July 22, 2019, the district court dismissed a Title III case, based on another defense: that the required remediation was not "readily achievable." In *Smith v. Golden China of Red Wing, Inc.*, the plaintiff claimed that a restaurant in Red Wing, Minnesota, lacked the accessible parking spaces required under the ADA. The restaurant claimed that compliance was not readily achievable and, therefore, was not required under the ADA. The restaurant was a small business with only two employees, and the remediation would have cost between $29,000 and $39,000, which would have put the restaurant out of business. The court agreed that under these facts, remediation was not readily achievable, rejecting the plaintiff's counterarguments that to pay for the work, the restaurant could mortgage its property, obtain tax incentives, spread the cost over time, or stop paying its owner's salary, and that the company must have had funds since it was paying legal fees to defend the lawsuit.

The Eighth Circuit Court of Appeals weighed in on Title III on July 31, 2019, in *Dalton v. NPC International, Inc.*, in which Ogletree Deakins shareholder Thomas L. Henderson represented the defendant. In *Dalton*, the plaintiff sued a restaurant franchisee in Fergus Falls, Minnesota, alleging that the restaurant's parking lot lacked appropriate access aisles. The restaurant immediately corrected the problem and moved to dismiss the case on the grounds that it was moot. The plaintiff then amended his complaint to add three new alleged violations. The district court dismissed the lawsuit, as we reported in 2018, and the court of appeals has now affirmed that dismissal. The appellate court held that the original claims had become moot, because, after the defendant's permanent remediation of the parking lot, the plaintiff could not show that those alleged violations were likely to recur. The court also affirmed the dismissal of the newly added claims, on the grounds that the plaintiff lacked standing—that is, he had not suffered any injury because he had not actually encountered those alleged violations when he patronized the restaurant.

Next, on August 13, 2019, the U.S. District Court for the District of Minnesota dismissed another Title III lawsuit, again relying on both mootness and standing to reach its decision. In *Dalton v. JJSC Properties,*

LLC, the plaintiff got lost while driving in St. Paul, Minnesota, pulled into a gas station to look at an online map, and noticed that the station did not have proper signage or markings for accessible parking. When he filed suit, the defendant immediately added the required signage and, when weather permitted, painted the parking lot surface. The court ruled that the lack of any prior complaints about the gas station, its swift remediation of the alleged violations, and its assurances that it would continue to comply in the future rendered the plaintiff's claims moot. In response to defendant's dismissal motion, however, the plaintiff argued that the parking lot was also impermissibly sloped and that there was no accessible route from the parking space to the gas station's exterior restroom. While those new claims were not moot, the court held that the plaintiff lacked standing to assert them because he had not specifically identified those alleged violations in his complaint and he had not encountered, and had no knowledge of, the issues when he filed suit.

Finally, on August 15, 2019, a Minnesota state district court joined the fray. In *Boitnott v. Latuff Bros. Inc.*, the plaintiff asserted that architectural barriers prevented him from patronizing the defendant's autobody shop in St. Paul. In an earlier decision, the Ramsey County District Court had dismissed several counts of the lawsuit on the ground that the defendant's remediation had rendered those claims moot. This new decision arose from the defendant's second motion for summary judgment, in which it argued that the plaintiff lacked standing as to the remaining counts because he could not demonstrate a "real and immediate threat of future injury" arising from the defendant's violations. Although the plaintiff lived near the defendant's business, he had never been to the body shop before, and he presented no evidence that he was frequently in the neighborhood. Moreover, he testified in his deposition that he had no plans to return to the body shop. Therefore, the court agreed that he did not have standing to assert those remaining claims.

Key Takeaways

While these cases were decided on several different bases, together with prior cases they demonstrate that many defenses are available in ADA "drive-by" lawsuits and that Minnesota courts are receptive to those defenses. Therefore, businesses facing such lawsuits may want to evaluate these and other potential defenses to determine the best strategy for responding to such claims.

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