WEBSITE ACCESSIBILITY LITIGATION

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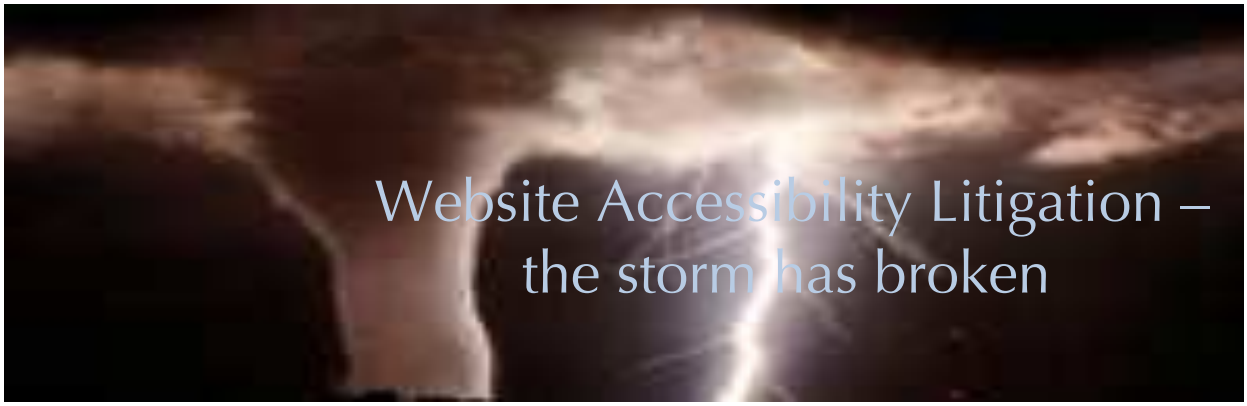

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I. Introduction

I gave my first seminar on Website Accessibility Litigation in January of 2016 with the title "An ADA Storm is Brewing." At the time the total number of website accessibility lawsuits filed by private plaintiffs was fewer than 30, and all but a few had been filed by a single law firm from Pennsylvania in a single federal court. Between January and July 1 of this year more than a thousand website accessibility lawsuits were filed by a number of law firms from Florida, New York, California and elsewhere, up from only about 800 in all of 2017.[1] The storm has broken, with more lawsuits from more firms on the horizon. I hope this paper will help you and your clients ride out the storm.

II. What this paper covers.

The Americans with Disabilities Act has three major divisions. Title I covers employment. Title II covers state and local government entities. Title III covers "public accommodations," a phrase that includes just about any non-governmental entity that is open to the public, including professional organizations like law firms and medical offices, hospitals, non-profits like the Red Cross, and almost anything else you can think of. Today I'm only going to be talking about Title III. Governments and employers have their own website issues, but the recent increase in website accessibility lawsuits has come from Title III cases and Title III presents distinct legal and practical issues. Among the other things I'm not going to cover are Section 508 of the Rehabilitation Act, which covers federal government entities, the Air Carrier Access Act, which covers airlines, and the 1996 Telecommunications Act, which covers broadcast and cable television. Again, these all

[1] These statistics come from the ADA blog of Seyfarth Shaw at www.adatitleiii.com

have their own particular legal requirements and have not been the focus of widespread private lawsuits.

III. The Gathering Storm – origins of ADA web litigation

The Americans with Disabilities Act is among the most recent federal laws concerned with accessibility for the disabled. It was passed in 1990, with an effective date for most provisions in late 1991. At the time e-commerce was a fraction of U.S. economic and social activity. Amazon was not started until 1994. Ebay arrived in 1995. Facebook did not arrive until 2004, and the other social media platforms like Twitter, Instagram and Snapchap came even later. Wordpress, one of the first services that allowed relatively easy creation of a personal or small business website was founded in 2003. Back in 1991 the online world consisted almost exclusively of proprietary dial up services like Yahoo and AOL. There is no mention of the internet in the ADA and the list of "public accommodations" required to comply with Title III includes only ordinary brick and mortar facilities. Regulations describing what Title III requires are almost exclusively directed at questions of physical access.

Modern website accessibility litigation began in 2015 when plaintiffs' lawyers began to realize that the absence of statutory references to the internet could be exploited to create the kind of uncertainty necessary to drive lucrative settlements. To understand how this happened requires a look at how "ordinary" private litigation based on physical accessibility developed in the first 14 years after the ADA was passed, and how theories applying the ADA to websites developed in parallel with the growing importance of the internet in daily life.

A. Understanding private lawsuits under the ADA – serial litigation.

On its face the ADA does not look appealing for plaintiff's attorneys. The only relief available for a plaintiff is an injunction to compel compliance with the statute plus the recovery of

Title search: Website Accessibility Lawsuits

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