



75°

South Florida leads nation in controversial disability lawsuits

Email Facebook 26 Twitter 10  4



1 of 5

MARK RANDALL, SUN SENTINEL

South Florida leads nation in controversial disability lawsuits

By Amy Shipley and John Maines, Sun Sentinel

11:06 pm, January 11, 2014

South Florida has become the runaway national leader in federal disabled-access lawsuits that some say are accomplishing little more than providing quick cash to attorneys.

More than one of every five such claims filed in the United States in 2013 originated in the Southern District of Florida, where cases often end in hasty settlements that ensure attorneys get paid and make the lawsuits disappear — but fail to correct the vio-

lations they are supposed to address.

Local business owners say they are being extorted by a handful of serial-filing lawyers more concerned with turning profits than helping the disabled.

"They don't care if you fix it or not," said Darcy L. Tyson, a [Delray Beach](#) code enforcement officer. The businesses "pay between \$5,000 and \$12,000 and it goes away ... People are taking complete advantage. It's a moneymaker. It has nothing to do with compliance."

The suits, which allege violations ranging from wheelchair ramps that are too steep to paper-towel dispensers perched too high, now hit South Florida's federal courts more than twice a day and have swelled by 500 percent in the last five years. The rise in local cases has significantly outpaced the national average, which has seen cases nearly double during that time.

Just five attorneys and a handful of plaintiffs brought almost two-thirds of the nearly 700 disabled-access suits in Florida's southern district in 2013. They say they are performing a public service by pressuring reluctant business owners to meet accommodation standards laid out in the 1990 Americans With Disabilities Act.

"The only people who enforce the ADA are these few plaintiffs and their attorneys," said Thomas B. Bacon, a Cooper City attorney who has represented plaintiffs in more than 300 disabled-access cases.

Though the U.S. government also files occasional lawsuits, the Act was designed to empower private citizens to bring claims so the Department of Justice would not have the burden of chasing down every mom-and-pop operation in violation.

Only the attorneys, not the plaintiffs, stand to profit from the suits. The Act does not provide for damages, but it was designed to give citizens incentive to bring the lawsuits by allowing them to recover what they pay for attorneys and court fees. The financial risk of paying the bills for two sets of attorneys motivates many businesses to settle rather than go to court.

But the law provides no such incentive for plaintiffs and their attorneys to ensure that promised improvements are made once the checks clear.

"About 80 percent of the [businesses] don't ever do the changes or do a minimal amount of changes, and that defeats the whole purpose of the ADA," said Bob Cohen, the head of Access for the Disabled, a not-for-profit in Coral Springs that has been a party in more than 375 such lawsuits.

Neighborhoods from Palm Beach to Miami-Dade counties have been hit by the recent waves of lawsuits. Eight eateries along a lively third-of-a-mile stretch of [Delray Beach](#)'s Atlantic Avenue — including Buddha Sky Bar, City Oyster & Sushi Bar, Carpe Diem, Scuola Vecchia Pizza e Vino and the now-closed Paddy McGee's — were named in suits from a single plaintiff during a one-month filing blitz just over a year ago.

One Palm Beach restaurant owner confided to the Sun Sentinel that he agreed in a settlement to pay more than \$12,000 in plaintiff's attorney's fees, but didn't have enough cash after forking over those costs to fix all of the violations in his establishment. The owner declined to be named. So far, he said, nobody's come back to check.

"What I've seen out there is almost zero enforcement of previous settlement agreements," said Douglas Steven Schapiro, a [Boca Raton](#) attorney who has both sued and defended businesses in ADA cases. "Which is really sad."

Dangerous door mats

Before he was served with a lawsuit in October, Sergio do Rosario said he had not received a single complaint about access to his strip mall in Pompano Beach.

The suit alleged at least nine violations. Among them: Do Rosario's disabled parking space was not large enough to accommodate

a disabled-access van, and door mats at store entrances represented dangerous obstacles.

Do Rosario said he and his business partner could have improved the property if given notice before a lawsuit was filed. Now, he said, they have additional costs to bear.

"I not only have to pay for a [new] ramp, I have to pay some lawyer \$500 per hour," do Rosario said.

Joe Houston, who requires a wheelchair to get around and has limited use of his hands, disputed the assertion that businesses would willingly comply with federal law if only they knew they were in violation.

Houston has been a plaintiff in more than 200 lawsuits. Like Cohen, he runs an accessibility non-profit — his is called Access 4 All and is based in Pompano Beach.

Both Houston and Cohen say letter-writing campaigns don't work.

"The properties ignore the law," Houston said. "They are aware of it, but they do nothing until a lawsuit is brought up."

Said Cohen: "We tried for five years nothing but letters and personal phone contacts with restaurants and hotels, and we got no place ... We got extremely frustrated with the lack of cooperation."

Cohen and Houston told the newspaper they did not get any remuneration for bringing the claims. Their attorneys, they said, pay all of the court costs and other expenses and collect their fees from the money handed over in settlement deals.

"All I care about is getting buildings in compliance," Houston said. "The attorneys give me absolutely nothing. I never made a dime."

Florida's most frequent plaintiffs work largely with the same small group of attorneys, according to a review of court records. Among the busiest filers of ADA suits last year:

- Schapiro
- Bacon
- Hollywood's Mark David Cohen
- Boca Raton's Drew M. Levitt
- Fort Lauderdale's Philip Michael Cullen III.

Levitt said local attorneys provide disabled plaintiffs the legal tools they need to take on lawbreaking businesses in an area that sees little federal enforcement.

The law "works exactly the way it's supposed to work," Levitt said. "The statute was designed so a disabled person does not have to lay out money to hire a lawyer to get public facilities to be accessible to them."

Florida's Rising Caseload : Are Pools to Blame?

Updated regulations spelled out by the Department of Justice in 2010 — including that pools must provide wheelchair lifts — may be partly responsible for the rise in cases South Florida, which is teeming with public pools and businesses that offer them.

The Sun Sentinel found a host of cases brought against local hotels alleging no other access violations but that one. Among those targeted by plaintiff Howard Cohan, a Broward resident who has cerebral palsy, and attorney Mark David Cohen: the Wyndham

[Boca Raton](#); a Super 8 in Riviera Beach; Lisa Motel in Lake Worth; the Brazilian Court Hotel and Beach Club in Palm Beach.

South Florida is not alone in grappling with serial filers and outraged business owners. California and other states that, unlike Florida, have additional state laws that allow plaintiffs to collect damages in disabled-access cases have seen repeat filers at both the state and federal level, records show.

Last year, two U.S. representatives from California introduced legislation with the goal of amending the Americans With Disabilities Act to impose notice and compliance opportunities for defendants before they are hit with lawsuits. But as was the case with more than a dozen similar pieces of legislation introduced since 2000, including by former Florida Reps. Mark Foley and Clay Shaw, the bills stalled.

David Warren Peters, the chief executive of the California-based Lawyers Against Lawsuit Abuse, said such measures have failed in part because excessive filings are centered only in a few states. Also, some legislators have argued that imposing a mandatory period of notice would ensure only that businesses would delay compliance.

Peters proposed tying the awarding or reissuing of business licenses or fire inspections to compliance with ADA laws. That, he said, would put pressure on businesses without getting attorneys involved.

Schapiro said settlements in disabled-access cases should be open to judicial and public scrutiny. He said some attorneys charge excessive fees that appear only in confidential agreements that even judges don't review. Schapiro said the vast majority of his settlements are open; records show he sometimes collects less than \$4,000 for a case.

"As far as the law being abused, I've seen it," Schapiro said. "The ADA is a worthwhile statute designed to serve the public good, but it is being taken advantage of by a certain number of [plaintiff] attorneys who say, 'We can settle and go away if you pay \$10,000 or \$15,000.' ... [The businesses] do the math, and they pay the extortion."

Peter Roubekas, the owner of the Farmer Girl Restaurant in Lake Worth, said he refused to settle a lawsuit filed against him in March. Instead, he hired a national compliance firm and spent some \$20,000 on improvements inside and outside his property.

The opposing attorney, Levitt, told the Sun Sentinel in an email the restaurant remains "very non-compliant." Levitt also said, "we're entitled by federal law to have him, the lawbreaker, and not our innocent client, pay our fees ..."

And so the case continues.

"It's the worst nightmare I've ever faced in 47 years in the restaurant business. The bottom line, what they want, is money to settle," Roubekas said. "They are using the law to strip people of thousands of dollars."

anshipley@tribune.com

[Account](#)

[Sign in](#)

[Register](#)

[Customer Services](#)

[Advertising Services](#)

[Contact Us](#)

[Customer Services](#)

[Advertising Services](#)

[Contact Us](#)

[Terms of Service](#)

[Privacy Policy](#)

[Visit our desktop site](#)

[Terms of Service](#)

[Privacy Policy](#)

[Visit our desktop site](#)[A Tribune newspaper website](#)

[A Tribune newspaper website](#)