

Phyllis F. Resnick, President

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SEPTEMBER, 2011

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SEPTEMBER, 2011

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(Bobby-Approved)

******Please Note******

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DIRECTLY ONLINE AT WWW.ADAACCESSNOW.ORG**

**THE MEMBERSHIP FORM IS ALSO ATTACHED AT
THE BEGINNING OF THIS NEWSLETTER**

email: phyllis@adaaccessnow.org

“ACCESS NOW, INC.”®
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Membership Form

******IF POSSIBLE, WE PREFER THAT YOU REGISTER ONLINE******

******JUST GO TO OUR WEBSITE SHOWN ABOVE AND CLICK ON
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Date _____

Name (PLEASE PRINT) _____

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City _____ State _____ Zip Code _____

Telephone _____ Fax _____

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***** (STRONGLY ENCOURAGED – VERY HELPFUL!!!!!!) *****

Non-Disabled _____ Disabled _____

If Disabled, give brief description:

(MOBILITY – WHEELCHAIR-USER, PART/FULLTIME; VISION; HEARING)

Do you use a service dog? _____ Name _____

If Disabled, INTERESTED IN LEARNING MORE about being a PLAINTIFF?

YES _____ NO _____

Donation _____ (APPRECIATED BUT **NOT REQUIRED**)

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Please tell us how or from whom you heard about “Access Now”® (if from the internet, please tell us the site):

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PLEASE SIGN!!!!!!!!!!!!

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**I BELIEVE THAT
MANY OF THESE
NAMES MIGHT BE
FAMILIAR TO YOU.
IN FACT YOU MIGHT
EVEN SEE YOUR OWN!**

407 Lincoln Road, Penthouse Southeast, Miami Beach, FL 33139

September, 2011

Dear Reader:

We hope that, once again, you will enjoy reading our latest newsletter and that you would like to join us in our mission, our goal and our achievements. (THERE IS NO FEE REQUIRED. HOWEVER, TAX DEDUCTIBLE DONATIONS WILL BE MOST GRATEFULLY ACCEPTED.) Also, please let us remind you that our membership is open to both the able-bodied as well as to the disabled.

If you would like to become one among our growing list of members, please either fill out, SIGN and return the attached form to us or, preferably, you may fill out the form online by logging on to our website at www.adaaccessnow.org and going to the "Membership" link. (The latter method makes it much easier and quicker for us to enter you into our database and is therefore particularly helpful.)

IF YOU ARE ALREADY A MEMBER, PLEASE SHARE THE ENCLOSED MEMBERSHIP FORM WITH SOMEONE YOU KNOW!!! THANK YOU!

We are very proud of the strides we have made and we hope that we can count on you as one of our members and, in an abundance of optimism, we thank you in advance!

Most sincerely,

Access Now, Inc.[®]
Phyllis F. Resnick, President

No Jews Allowed

By Marc Dubin, Esquire

Imagine that you sought help from the police after being beaten by your husband, only to find that you were told that you could not receive their services because you are Jewish.

Imagine that you sought the services of the domestic violence program but are told that you could not receive their services because you are Jewish.

Imagine that you sought the services of the Red Cross during a Hurricane but are told that you could not receive their services because you are Jewish.

Imagine that you are the victim of rape, and sought the services of the rape treatment service but are told that you could not receive their services because you are Jewish.

Imagine that you desperately need medical care but are told that you could not see the doctor because you are Jewish.

Imagine that you went shopping, and are unable to go into a grocery store because you are Jewish.

And imagine that you seek out the services of an attorney, and are denied services because you are Jewish.

You would be outraged, and hurt. You would find allies to join you in protest. You would seek to have anti-discrimination laws enforced. You would consider suing. You would wonder how in this day and age such discrimination could occur.

Every day, people with disabilities seek the services of law enforcement, domestic violence programs, Red Cross Shelters, rape treatment programs, health care providers, businesses, attorneys, and others, and are denied services because they have a disability. Architectural barriers that should not exist remain. Sign language interpreters are not provided. Policies that should be changed are not changed, and these policies prevent people with disabilities from using the services they need. Written materials are not offered in alternative formats. Service animals are excluded.

If you are a person with a disability, these scenarios are all too familiar. You recognize these denials for what they are - civil rights violations. These denials are as offensive, as hurtful, as harmful as signs saying No Jews Allowed.

My family understands this all too well. I am Jewish. When my parents were growing up, they were kicked out of school, for being Jewish. Their parents were no longer allowed to work, because they were Jewish. They were beaten up by their neighbors, because they were Jewish. They could not shop in the neighborhood grocery stores, because they were Jewish. And, they were arrested, along with every other member of their family, because they were Jewish.

Yes, it was another time and place. It was Poland, and Hitler was coming to power. Discrimination was all around them, and grew, and grew.

I believe that I am well aware of the cost of social injustice and of the abuse of power. My parents instilled in me an awareness of the importance of public service, the cost of prejudice and abuse of power, and of the debt I owe.

Both of my parents came to the United States in 1952, from Lodz, Poland. My parents were both survivors of Hitler's concentration camps, and were the only members of their respective families to survive. (They each had 7 brothers and sisters) Before the war, Lodz had the second largest Jewish community in Europe. As of 1939, there were 230,000 Jews in Lodz. The Germans moved them all into one area of the city, and walled it off. Eventually, an additional 25,000 people were brought in (20,000 Jews, and 5,000 Gypsies). The Germans then systematically starved and killed them.

Beginning in January of 1942, the Germans began transporting Jews from Lodz to the Chelmno death camp, at a rate of approximately 1,000 a day. Within 3 weeks, over 10,000

people had been transported. Between February and April of 1942, over 34,000 more were taken away and killed. These deportations continued month after month. In August 1944, the ghetto was closed, and all remaining residents were transported by train to Auschwitz. My parents and some members of their families were among this group.

As of 1944, of the original 250,000 Jews in Lodz, 30,000 were still alive. Shortly before the end of the war, on January 18, 1945, the Germans removed 66,000 Jews from Auschwitz, and in an effort to avoid discovery by the Soviet Army, which was advancing toward the camp, marched them in the snow for days, and shot them as they marched, trying to destroy the evidence of what they had done. My father was on this death march, but escaped by leading a group of prisoners into the forest, emerging only when the Soviet Army arrived.

By the time they were liberated from Auschwitz at the end of the war, in January 1945, only 15,000 of the original 250,000 Jews in Lodz had survived. An estimated 1,500,000 Jews were killed at Auschwitz. All of my parents' families, including their parents, their grandparents, their cousins, their uncles, their aunts, their sisters, and their brothers, were killed.

Upon their liberation from Auschwitz, my parents were sent to a Displaced Persons camp, where they were kept for seven years. My sister was born in and spent the first six years of her life in the Displaced Persons Camp. In 1952, my parents emigrated to the United States.

I tell you this because it is essential that we understand that the discrimination we address on behalf of people with disabilities is about civil rights, and about what we as a nation stand for when it comes to ensuring equal opportunity. When someone in a wheelchair is denied access to shelter, or access to government services, or access to civic life, they are experiencing discrimination. When someone who is deaf or hard of hearing is denied access to health care because a doctor refuses to pay for a qualified sign language interpreter, they are experiencing discrimination. When someone who is blind is denied access to written materials in accessible format, they are experiencing discrimination. Let's not be unclear about this. The denial of civil rights is the first step toward seeing people with disabilities as inferior, and the first step to allowing the kind of thinking that can lead us down a very dangerous path. When the Nazis came to power, the first group killed was people with disabilities. It is essential that we understand the parallels, and that when we see discrimination, we stand up to it, and that we ally ourselves with its victims. We need not see signs saying "No People with Disabilities Allowed" to understand that discrimination is occurring, and that we need to do what we can, what we must, to remove those invisible, yet powerful signs.

Lack of intent is not the test. The test is whether the discrimination occurs, and whether we have the will to overcome the discrimination. I believe we do, if we work together, and if we have the will to identify the discrimination for what it is. Reproduction of this article is encouraged.

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NEWSLETTER UPDATE – September, 2011

FROM PHYLLIS F. RESNICK, PRESIDENT

HELLO AGAIN, EVERYBODY! We made the decision to lead with the article above in the hope of quickly getting your attention and exciting your interest! We deeply hope that we have succeeded and, if we have, there is here in our second newsletter of the New Year, so much to report; much of it exciting, some of it disturbing and all of it enlightening. We have had many, many requests for assistance with regard to the ADA (the Americans with Disabilities Act) and the FHA (Fair Housing Act – which governs multiple-dwelling units). We are also receiving many calls for assistance with regard to service animals. It continues to astonish us that in the year 2011, there remain vast pockets of ignorance of and non-compliance with the ADA, which was enacted into law in 1990! That is why your continuing support is so very, very important to us!

July 2010 marked the 20th anniversary of the passing into law of the Americans with Disabilities Act (the ADA). It is difficult to believe and sad to contemplate that, even after all this time, we still receive pleas daily from people who are being denied their rights under this civil rights law.

As you may know, we have never required a membership fee for joining with us in our mission and we are NOT going to change that now. However, we have always stated that voluntary donations are welcomed and deeply appreciated, although we have never actually solicited them. This year, however, is different, as it is for so many people. THEREFORE, WE ARE NOW ASKING FOR URGENTLY NEEDED VOLUNTARY DONATIONS IN ORDER TO KEEP OUR EFFORTS MOVING FORWARD. (Please remember that all donations to us are tax deductible to the fullest extent of the law.)

Any donation of any amount will, you may be certain, be put to good use as we pursue as much accessibility as possible for as many members of the disabled community as possible. To that end, we will now begin to send our twice-yearly newsletter by EMAIL TO THOSE WHO HAVE FURNISHED US WITH EMAIL ADDRESSES, thereby saving costs as well as trees. (Of course, for those who have not sent us an email "addy", we will be mailing this newsletter via postal mail, as we have done in the past.) If you wish to receive this newsletter via email, please update us as to your current email addy. We look forward to hearing from you at any level of financial assistance which you feel able to provide. **THANK YOU SO VERY MUCH!**

I would like to thank all our members, worldwide, for their continued support and, in an abundance of optimism, our prospective members as well! And now, to our news-----

THE UPDATE:

Membership – We now have 942 members representing 47 states and Puerto Rico. We are also proud to claim members in Canada, Hong Kong and Australia. Our Board of Directors stands at 28, our Executive Committee at 6, our Attorneys represent 4 law firms and our Consultants number 6. We want to acknowledge here our debt to the members of our Board of Directors and our Executive Committee for their support, their encouragement and their many kinds of contributions to our goals. Most particularly, we want to express our appreciation to our First Vice-President, Marla Dumas, for assuming that mantle of responsibility. Above all, our deepest appreciation goes to the attorneys and consultants who handle all our cases. Contrary to what is widely believed by the public, these are professionals who, although they earn their livings, in part, through these efforts, are primarily attracted to this work by their belief in and dedication to our mission!

Finally, we would be quite remiss if we failed to mention the enormous contributions of our computer consultants, Gregory Arkin and Alain Ginzberg, without whom we would not be able to function! Above all, I want to express my everlasting gratitude to our assistant extraordinaire, Thomas Miller, for composing and typing the bulk of this newsletter and for so much more. Without him this publication would be impossible to achieve!

A BRIEF OVERVIEW OF OUR LITIGATION:

Since our February newsletter, Access Now, Inc.[®] has made progress in settling cases in several states. We have filed a total of 979 cases since our inception. Presently, there are 159 cases with outstanding Settlement Agreements, requiring alterations or modifications which in several cases should be completed by August 1, 2011, or later. (Cases involving hospitals and other large or complex facilities have post-settlement compliance completion dates much further in the future.) During the past six months, Access Now[®] has entered into 16 additional settlements to make hospitals ADA-compliant. [\(See more detailed, important information about that below.\)](#)

Access Now[®] continues to assert itself nationally in scope. The states in which cases have been settled in the past six months range from the Midwest to the Atlantic shore. We will continue expanding our geographical presence as best we can as we continue to receive requests for information and assistance from around the country and internationally. Please notify us if you become aware of a situation where access continues to be denied. Access Now[®] remains solidly in the forefront of the fight for accessibility.

The following is a brief listing of the cases that have been settled since our last newsletter:

Hospitals (# of beds)

Trident Health Systems (440)	Charleston	SC
Southwest Texas Methodist Hospital (18)	San Antonio	TX
North Austin Hospital (128)	Austin	TX
South Austin Hospital (20)	Austin	TX
St. David's Medical Center (43)	Austin	TX
Research Medical Center (42)	Kansas City	MO
OU Medical Center (935)	Oklahoma City	OK
Northeast Methodist Hospital (122)	San Antonio	TX
Metropolitan Methodist Hospital (339)	San Antonio	TX
Methodist Specialty & Transplant Hospital (20)	San Antonio	TX
Swedish Medical Center (1245)	Englewood	CO
North Suburban Medical Center (128)	Thornton	CO
Presbyterian / St. Luke's Medical Center (680)	Denver	CO
Rose Medical Center (420)	Denver	CO
Sky Ridge Medical Center (185)	Lone Tree	CO
Medical Center of Aurora (314)	Aurora	CO

We continue to make significant progress in the healthcare area. The total of 16 Health Corporation of America (HCA) facilities listed in this newsletter brings to 203 the total adjudicated at Fairness Hearings over the past two years. The 16 facilities have a total of 5,079 beds in thirteen states. As a consequence, over 42,000 beds have now been made accessible or are in the process of being made accessible because of our legal action.

We continue to be actively involved in cases involving medical institutions because of our strong belief that they constitute one of the most important ways to enhance the quality of life of the disabled community. These hospital settlements will make a great difference to members of our community. The settlements show that the ADA can work when there are dedicated advocates and attorneys using it for our benefit. [ADDITIONALLY, we are now embarking on bringing into compliance several more hundreds of hospitals throughout the nation. TO THAT END, WE NEED YOUR ASSISTANCE:](#)

[It would be of great, great help if any of you reading this newsletter would let us know about accessibility problems of any kind which you have encountered or of which you are](#)

aware, whether they involve barriers, vision or audio problems, at any of the hospitals listed above or indeed at ANY hospital in the nation that you do use, have used or are planning to use (i.e., if you would be in the #911 area of and/or geographically within reasonable distance of). If so, please notify us by sending an email to phyllis@adaaccessnow.org or a postal letter to Access Now, Inc. ® at 19333 West Country Club Drive, #1522, Aventura, Florida 33180. BRINGING HOSPITALS INTO COMPLIANCE WITH THE ADA IS ONE OF THE MOST IMPORTANT THINGS WITH WHICH WE SHOULD ALL BE ACTIVELY INVOLVED! THANK YOU SO MUCH FOR YOUR COOPERATION IN THIS REGARD!

Finally, our ongoing legal efforts demand that I comment on a case in Knoxville, Tennessee. Attorney Ed Zwilling reports that things are going well with our case involving “approximately six city parks and curb ramps, sidewalks and parking in the downtown business district of Knoxville.” Ed has been able to work very cooperatively with the city in developing a plan for addressing these issues. He has also been able to leverage his experience in previous cases to engage the city in addressing these issues in the most time and cost effective manner possible. We will keep you informed about Ed’s progress in reaching a settlement in the *City of Knoxville* case.

NON-ACCESS NOW® LEGAL MATTERS: We want to keep you informed about important recent litigation around the country, of which you might not be aware, as well as to update information from our previous newsletters affecting the rights of the disabled. We think it is important for our members to keep abreast of successes realized by and within the disabled community, whether accomplished by Access Now or by other organizations. We are all in this fight together!

Lawsuit Filed Against Netflix for Lack of Captions

On June 16, 2011, the National Association of the Deaf (NAD), the Western Massachusetts Association of the Deaf and Hearing-Impaired and deaf Massachusetts resident Lee Nettles filed a federal lawsuit against Netflix, Inc. The lawsuit charges Netflix with violating the Americans with Disabilities Act (ADA) by failing to provide closed captioning for most of its “Watch Instantly” movies and television streamed on the Internet. (*National Association of the Deaf et al v. Netflix, Inc.*)

An estimated 36 million Americans are deaf or hard of hearing. The deaf and hard of hearing community has repeatedly expressed concerns – via letters, petitions, blogs, and social media – to Netflix about its failure to provide equal access to “Watch Instantly”. The New York Times has described Netflix as the “only major player in the online-only video subscription business.” Netflix has over 60% of the streamed video services market share.

“We have tried for years to persuade Netflix to do the right thing and provide equal access to all content across all platforms. They chose not to serve our community on an equal basis; we must have equal access to the biggest provider of streamed entertainment. As Netflix itself acknowledges, streamed video is the future and we must not be left out,” said NAD President Bobbie Beth Scoggins.

“There is no excuse for Netflix to fail to provide captions so that deaf and hard of hearing customers have access to the same movies and TV shows as everyone else,” stated Arlene Mayerson, Directing Attorney of the Disability Rights Education and Defense Fund (DREDF), the lead attorneys, “Netflix admits that there is no technological issue. For people who are deaf and hard of hearing, captions are like ramps for people who use wheelchairs.”

The ADA requires that all “places of entertainment” provide “full and equal enjoyment” for people with disabilities. Plaintiffs are asking the court to declare that Netflix’s behavior constitutes a violation of Title III of the ADA, and to require that Netflix provide closed captions on all of its streaming content. DREDF and NAD ask deaf and hard of hearing

individuals who want to learn more about the lawsuit to visit: <http://www.dredf.org/captioning>, call the toll-free number 1-800-348-4232 (V), or email clanvers@dredf.org.

OTHER NEWS

FEDERAL COURT FINDS LOS ANGELES DISCRIMINATES AGAINST PEOPLE WITH DISABILITIES IN EMERGENCY PLANS

February 11, 2011

LOS ANGELES – In a decision with possible national implications, a federal court has ruled that the City of Los Angeles violated federal law, including the Americans with Disabilities Act, by failing to meet the needs of its residents with disabilities in planning for natural and other disasters. It is the first such decision in the country.

The federal class action lawsuit, brought on behalf of all people with disabilities in Los Angeles, was filed in January 2009 by plaintiffs Audrey Harthom and Communities Actively Living Independent and Free (“CALIF”), a nonprofit independent living center located in downtown Los Angeles. U.S. District Judge Consuelo B. Marshall held: “[T]he Court finds that Plaintiffs are denied the benefits of the City’s emergency preparedness program because the City’s practice of failing to address the needs of individuals with disabilities discriminates against such individuals by denying them meaningful access to the City’s emergency preparedness program.” The Court also found that “Because of the City’s failure to address their unique needs, individuals with disabilities are disproportionately vulnerable to harm in the event of an emergency or disaster.” The Court ordered the City to meet with the plaintiffs within three weeks to prepare a proposal for remedying the violations.

Los Angeles is particularly disaster-prone and susceptible to a variety of emergencies, including earthquakes, fires, landslides and terrorist attacks. The City experienced and suffered from the massive Northridge earthquake in 1994, as well as wildfires in 2008 and 2009. Despite such disasters, the City lacks adequate disaster planning for people with disabilities, such as accessible emergency shelters, plans for providing services and medication at shelters, accessible transportation and evacuation assistance as well as communication services that are available and accessible to people with a wide range of disabilities.

Today’s ruling highlights a national problem evident during Hurricanes Katrina and Rita, when people with disabilities, including many seniors who were seriously ill, were left behind to die because of a lack of disability planning. Those tragedies prompted this action in Los Angeles.

Karla Gilbride, a Disability Rights Advocates (DRA) attorney representing the plaintiffs said, “We are pleased with the Judge’s decision to ensure that L.A., which is home to more than half a million people with disabilities, plans for the safety of all of its residents.” Sid Wolinsky, DRA Litigation Director said, “We cannot tolerate another Katrina when disabled men, women and children were neglected. DRA and Disability Rights Legal Center (DRLC) have worked with other cities such as Oakland and Richmond to develop emergency plans that include people with disabilities. There is no reason why every city in this country should not be well prepared to meet the needs of disabled people.”

“The Court’s decision is not just a victory for people with disabilities and seniors but for all Los Angeles residents who need to know that our city is prepared when disaster strikes. These will be life and death issues for thousands of people with disabilities in the event of a major disaster,” stated Shawna L. Parks, DRLC’s Legal Director also representing the Plaintiffs. “We are hopeful that other cities will examine their emergency preparations as a result of this lawsuit to avoid the needless loss of life during any future emergencies.” Audrey Harthom, plaintiff and resident of Los Angeles said, “As a wheelchair user who lives alone, I am relieved that L.A. will now consider the

needs of its citizens with disabilities and that I will have a better chance of getting the help I need when the next disaster strikes.”

The court’s decision can be found at <http://www.dralegal.org/downloads/cases/Calif/order.pdf>.

OF NOTE TO FLORIDA RESIDENTS: Marc Dubin, former lead counsel of the ADA Section of the Civil Rights Division of the U.S. Department of Justice, now working with the Center For Independent Living of South Florida, and owner of the ADA Expertise website, has been very actively engaged in working on these same issues here in South Florida. For more information, go to mdubin@pobox.com. (We are proud to have him as one of our treasured members!)

Steve Gold’s “Treasured Nuggets of Information”

Steve Gold is very informed and active regarding issues of Medicare, Medicaid and Home Health Care. He is a treasure trove of information, and we strongly suggest that you take the time to view his website at <http://www.stevegoldada.com>. In his April 2011 issue of “Treasured Nuggets of Information”, Mr. Gold looked at where the low-income housing tax credit money went. In most states not even 10% went to the disabled and elderly on SSI, those defined as “extremely low income.” Information Bulletin #329 (April 2011).

Another article of interest can be found in the May 2011 issue. Mr. Gold examines the interplay between state and federal law with respect to the California Nursing Practice Act and the ADA/Section 504. He comments on how that interaction can help or hurt those with disabilities. Information Bulletin #332 (May 2011). Both articles are available in full at Mr. Gold’s website.

Steve Gold, The Disability Odyssey continues

Enjoy Mr. Gold’s wisdom online at <http://www.stevegoldada.com>.

GOVERNMENTAL NEWS

Legal Obligations for Waiting Lists & Accessible Units in Public Housing

By Marc Dubin April 4, 2011

When a wheelchair accessible unit becomes available should it be offered to the first applicant on the waiting list, or the first person with a disability who requires the accessible features?

HUD’s Section 504 regulations (24 CFR sec. 8.27) require recipients of federal funds to take reasonable steps to assure that information on available accessible units reaches otherwise qualified individuals with disabilities who need the features of those units. The regulations provide that whenever a unit that meets the requirements of the Uniform Federal Accessibility Standards (UFAS) for a mobility-impaired person becomes available for occupancy, a recipient shall first offer the unit to a qualified individual with disabilities currently residing in a non-accessible unit in the same project or comparable projects, under common control, who requires the accessible features. If there are no such persons currently residing in the recipient’s projects, the recipient shall then offer the unit to the next available qualified individual with disabilities on its waiting list, provided that the person requires the accessibility features of the unit. The recipient shall skip over non-disabled applicants on the waiting list to offer the unit to the next qualified individual who requires the unit’s accessibility features.

If no qualified applicant with disabilities requires the accessible features of a unit, and the recipient places a family where none of the family members have disabilities in that unit, the recipient may include language in the lease requiring this family to agree to move to a non-accessible unit, as soon as one becomes available that otherwise meets the family’s needs.

Attorney Marc Dubin is Director of Advocacy for the Center for Independent Living of South Florida. You can follow his ADA commentary on Twitter (@adaexpertise) and via his blog at <http://www.DisabilityAdvocacyBlog.org>. We are proud to list him as one of our valued members!

The following articles demonstrate that the federal government is getting serious about enforcing the laws prohibiting disability discrimination. It is nice to have a more reliable partner in this effort.

Delta Fined \$2 Million for Violating Air Travel Disabilities Rules

February 17, 2011

WASHINGTON – The U.S. Department of Transportation (DOT) announced today that it has assessed a fine of \$2 million against Delta Air Lines for violating rules protecting air travelers with disabilities. This fine is the largest civil penalty ever assessed against an airline by DOT in a non-safety-related case. “Ensuring that passengers with disabilities receive fair treatment when they fly is a priority for the Department of Transportation,” said U.S. Transportation Secretary Ray LaHood. “We take our aviation disability rules seriously and will continue to enforce them vigorously.” Of the of \$2 million penalty, \$750,000 must be paid by the carrier and up to \$1,250,000 may be used to improve its service to passengers with disabilities beyond what is required by law. The order also directs Delta to cease and desist from future violations of the Air Carrier Access Act (ACAA) and Part 382, DOT’s implementing regulations for the ACAA

The DOT requires airlines to provide assistance to passengers with disabilities while boarding and deplaning aircraft, including the use of wheelchairs, ramps, mechanical lifts and service personnel where needed. Carriers also must respond within 30 days to written complaints about their treatment of disabled passengers, and specifically address the issues raised in the complaints. In addition, airlines must properly code and record their disability-related complaints in connection with required reporting to the Department.

An investigation of disability complaints filed with Delta and DOT revealed many violations of the requirement to provide assistance getting on and off the airplane. The carrier’s complaint files also showed that it frequently did not provide an adequate written response to disability complaints from passengers. The DOT’s Aviation Enforcement Office further found that Delta failed to properly report each disability complaint in reports filed with the Department.

Delta admitted no wrongdoing. It says it will install more elevators, and allow customers to specify what type of wheelchair help they need when they buy a ticket on the airline's website. It will also install additional jetways – instead of stairs – for boarding regional flights. It is expected that Delta’s actual costs to implement these improvements will be significantly greater than the credited amounts.

The consent order, docket DOT-OST-2011-0003, is available on the Internet at <http://www.regulations.gov/#!documentDetail;D=DOT-OST-2011-0003-0007>. Visit the [Disability.Blog \(http://blog.govdelivery.com/usodep/transportation/\)](http://blog.govdelivery.com/usodep/transportation/) to read and comment on transportation-related subjects and other issues of interest to the disability community. Travelers with disabilities should review DOT’s pamphlets, [New Horizons for the Air Traveler with a Disability](#) and [Fly Rights](#), for more information about the Air Carrier Access Act. These resources can be found at <http://www.dot.gov/>. Air travelers, who experience disability-related air travel service problems, may call a toll free number at 1-800-778-4838 or 1-900-455-9880 (TTY) 9 a.m. to 5 p.m., Monday through Friday (except federal holidays) to obtain assistance.

Houston Bus Company Fined \$55,000 for Violating the ADA

March 28, 2011

WASHINGTON – A Houston bus company was fined \$55,000 for violating passenger carrier accessibility requirements under the Americans with Disabilities Act (ADA), announced the Departments of Justice and Transportation. In addition to the fine, a consent agreement reached with the Federal Motor Carrier Safety Administration (FMCSA) and the Justice Department requires Autobuses Ejecutivos LLC d/b/a Omnibus Express to upgrade its fleet to meet ADA requirements by July 2011 or have its operating authority revoked.

“We owe it to the traveling public to make sure commercial buses are safe and accessible for everyone,” said FMCSA Administrator Anne S. Ferro. In February 2009, FMCSA and the Justice Department entered into a memorandum of understanding concerning the enforcement of commercial passenger buses.

More information about the Civil Rights Division and the laws it enforces is available at www.justice.gov/crt. The consent agreement with Omnibus Express can be viewed at www.fmcsa.dot.gov/documents/ABOUT/News/Omnibus-ConsentAgreement-508.PDF.

Justice Department Reaches Agreement with Rhode Island on Voter Registration at Public Assistance and Disability Offices

March 28, 2011

WASHINGTON – The Justice Department announced today that it has reached an agreement with Rhode Island officials to ensure that all public assistance and disability services offices in Rhode Island offer voter registration services to their clients. The agreement is necessary to bring Rhode Island into compliance with the National Voter Registration Act (NVRA).

The agreement was filed in conjunction with a lawsuit by the Justice Department’s Civil Rights Division alleging that Rhode Island violated federal law by failing to provide voter registration services at all public assistance offices and all offices that provide state-funded programs primarily aimed at persons with disabilities. Congress enacted the NVRA in 1993 in part to enhance citizen participation in elections by making voter registration opportunities available at offices that provide essential services like public assistance and disability services.

“The voting process begins with registration, and it is essential that all citizens have unfettered access to voter registration opportunities,” said Thomas E. Perez, Assistant Attorney General for the Justice Department’s Civil Rights Division. “I am pleased that officials in Rhode Island worked cooperatively with the Justice Department to reach this agreement, which will ensure that all citizens who apply for public assistance or disability services in Rhode Island will be able to register to vote as easily and conveniently as possible.”

The two-year agreement, if approved by the district court, commits Rhode Island to undertake a variety of measures, including offering voter registration opportunities to all applicants for public assistance, WIC, rehabilitative services, developmental disabilities services and mental health services; distributing voter registration applications in public assistance and disability services offices and via mail; training employees on NVRA compliance; conducting regular internal compliance audits; and reporting the number of voter registration applications processed by public assistance and disability service offices. In the event compliance is not achieved within two years, the agreement will continue until compliance is reached.

More information about the NVRA and other federal voting laws is available on the Department of Justice website at www.justice.gov/crt/about/vot/. Complaints about discriminatory voting practices may be reported to the Voting Section of the Justice Department’s Civil Rights Division at 1-800-253-3931.

New ADA Regulations Took Effect March 15

Important changes to the ADA Title II and Title III regulations are in effect starting March 15, 2011. Title II applies to state and local governments. Title III applies to the private sector: stores, hotels, day care centers, non-profit organizations, medical providers, etc. Most of the changes in the two regulations are the same.

WHAT ARE THE CHANGES?

Service Animals

The definition of service animals now only includes dogs. Other animals, whether wild or domestic, do not qualify as service animals. Dogs must be individually trained to do work or perform tasks. Dogs that are not trained to perform tasks that mitigate the effects of a disability, including dogs that are used purely for emotional support, are not service animals. The regulations also clarify that the animal must be under the handler's control at all times, that the handler is responsible for the animal's care and what questions can and can't be asked a person regarding whether his or her dog is a service animal.

Miniature Horses

Although not under the definition of service animals, the regulations permit the use of trained miniature horses as alternatives to dogs, where appropriate. Assessment factors to determine appropriateness include the type, size, and weight of the miniature horse; whether the facility can accommodate these features; whether the handler has sufficient control of the miniature horse; whether the miniature horse is housebroken; and whether the miniature horse's presence in a specific facility compromises legitimate safety requirements that are necessary for safe operation.

Wheelchairs and Other Power-Driven Mobility Devices

The regulations distinguish wheelchairs and "other power-driven mobility devices" (OPDMDs). OPDMDs are mobility devices not designed for people with disabilities, but which are often used by people with disabilities (such as the Segway). Wheelchairs must be permitted in all areas open to pedestrian use. OPDMDs must be permitted unless their use would fundamentally alter programs, services, or activities; create a direct threat or create a safety hazard.

Ticketing (not parking tickets – tickets to sporting events, concerts, theater, etc.)

Tickets for accessible seating must be available to purchase during the same hours; during the same stages of ticket sales (pre-sales, promotions, lotteries, wait-lists, and general sales) and through the same methods of distribution (phone, in person, internet, third party) as tickets for non-accessible seating. The regulations also include requirements concerning information about the location and availability of accessible seating, hold and release of accessible seating to persons without disabilities, prevention of the fraudulent purchase of accessible seating, and the ability to purchase multiple tickets when buying accessible seating.

Effective Communication

The regulations include video remote interpreting (VRI) services as a type of auxiliary aid that may be used to provide effective communication. To ensure that VRI is effective, the regulations include performance standards for VRI and require training for users of the technology. The regulations state that a minor child may not be used to interpret or facilitate communication except under emergency situations.

More ADA Title II and Title III regulations changes go into effect next year on March 15, 2012. We will discuss those in future updates.

[Revised Final Title II Regulation](#) with new requirements in **bold** typeface.

[Revised Final Title III Regulation](#) with new requirements in **bold** typeface.

Please contact the New England ADA Center if you have any questions. Hit the reply button or send an email to adainfo@newenglandada.org or call 800-949-4232 voice/tty (in New England only).

FEATURED STORIES: We now bring you two stories about service animals. It remains one of the most vexing issues for their owners and the public. We hope these articles and the updated ADA regulations will shed additional light on the subject.

Confusion remains over service dogs, law

By Georgia East • *Sun Sentinel* • May 17, 2011

THE ISSUE: Under federal law service animals can accompany their disabled owners wherever they go, but some businesses deny them access.

It was supposed to be a birthday dinner. But it ended before it began when Judi Quinn, 64, was told she could not be seated indoors after showing up with her service dog at Scarfone's Coal Fired Pizza in Coconut Creek, Florida. "I was so mad, but I didn't lose it," said Quinn, who has multiple sclerosis and gets around in a motorized scooter. She said she never before had a problem at the restaurant. Scarfone's blamed the incident on a misunderstanding.

The Americans with Disabilities Act, passed in 1990, protects the rights of disabled people, including their use of service dogs. Yet disabled residents across South Florida say some big chains and smaller businesses are still unfamiliar with its mandates. Wal-Mart was cited for violations in 2009 after several people with service dogs were denied entry. The retailer agreed to pay about \$150,000 to those who filed grievances, to train its employees about service dogs and to launch a public-service campaign. Blockbuster settled a similar suit last July, as did the Golden Cab Corp. in West Palm Beach in 2008.

RISE IN COMPLAINTS

The U.S. Department of Justice does not break out figures on service dog complaints, said spokesperson Xochitl Hinojosa. But local Offices of Equal Opportunity say they are seeing a spike in such complaints, especially from people who need an animal for emotional support, which is protected under local law.

"It's rising," said Pamela Guerrier, director of the Palm Beach County Office of Equal Opportunity. "When it's not a visual disability, but something like depression or post-traumatic stress disorder, some people don't believe the person has a disability related to their request for the animal." Ken Lyons, director of the nonprofit Service Dogs of Florida, said his organization receives three to five calls per week from dog owners who have been refused service and businesses that want to know the guidelines. "When a person encounters this situation, they usually call the police," Lyons said.

In Florida, barring a disabled person and his or her service dog from a restaurant, hotel, airplane or other public place is a second-degree misdemeanor punishable by up to 60 days in jail and a \$500 fine. But advocates say many are unaware of the law.

Frank Fiore, chief financial officer of Scarfone's, said someone from Quinn's party came into the restaurant and asked whether dogs were allowed, but did not specify service dogs. He said Quinn didn't come in, something she denies. "If she came in, there would have never been a question," Fiore said. "We absolutely allow service dogs. We would never deny access to anyone with a disability."

Quinn said she told the restaurant manager that Cory, her golden retriever, is a service dog. Cory helps her to open doors and pick up things from the floor. She said she explained that Cory, who was wearing his service-dog vest, should be allowed inside. "The fellow just kept saying no dogs are allowed," said Quinn.

Not all businesses are required to allow service dogs. Exceptions include operating rooms, kitchens and sterile environments.

There are about 20,000 service dogs nationwide and as many as 2,000 in Florida, Lyons said. They assist with such tasks as retrieving medication, warning of impending seizures and

getting a telephone to someone during an emergency. Under the law, a business owner is allowed to ask two questions about a service dog: "Is this a service dog for disabilities?" and "What tasks or assistance does the dog provide you with?" The dog's owner does not have to prove it is a service animal.

DOG'S BEHAVIOR KEY

Advocates say a dog's behavior is key to finding out if it has been properly trained. Even under ADA guidelines, a misbehaving service dog can be ordered to leave if its behavior is dangerous to others. "If a service dog is barking during a movie, it can be ejected," Lyons said. "If someone takes their service dog to a restaurant and he's eating off everyone's table, the restaurant owner can kick the service dog out."

Jose Lopez, of Deerfield Beach, who is blind and has a guide dog, said disabled people shouldn't have to explain the purpose of their service animal. "It reminds you all the time that you're different," said Lopez. "It's no fun having to explain yourself over and over again."

This article can be found online at <http://www.miamiherald.com/2011/05/16/2220027/confusion-remains-over-service.html#ixzz1Mts6GyMk> An explanation of the revised ADA regulations on service animals can be found on our website at <http://www.ada.gov/>. A copy is on our website at <http://www.adaaccessnow.org/weblinks.htm>

A softer message about service dogs, to share with businesses

I have a disability and use a service dog, and I want to be your customer. I believe that you want me to be your customer, and I want to share with you some information about the Americans with Disabilities Act.

I have the right to access your establishment just like any other customer, and my service dog is allowed to accompany me.

You have the right to ask me if my dog is a service dog and what tasks it performs for me. That's it.

You may not require me to produce documentation – I am not required to provide any special identification for the dog, proof of training, or proof of vaccinations, and you may not ask me to do so.

You may not require me to talk about my disability – all I am required to tell you is that I have a disability – that's all.

You may not charge me anything extra because of my dog. In the unlikely event that my dog damages something, I will pay for the damage.

You may not seat me away from others or in any way that isolates me or segregates me from others. You may not seat me near a bathroom, near the kitchen, or in any less desirable location than others simply because I have a service dog with me.

If my dog is out of control and I cannot bring it under control, you may ask me to take my dog outside.

If my dog poses a threat to others, and I cannot address the threat, you may ask me to take my dog outside.

Even if your business has a "no animals allowed" policy, and even if the state health code prohibits animals on the premises, you must allow me to be accompanied by my service dog.

Service dogs come in all breeds and sizes, and assist people with a wide range of disabilities, not just people with vision disabilities. Feel free to ask me if I have a disability, and what tasks my dog performs for me. Please don't ask me anything else.

I want to be your customer, and pay you for the services you provide. Please let me.

This suggested protocol above was brought to us by Access Now® member Marc Dubin, Esq. (See above for a more complete description of who Marc is and the amazing work he does!)

U.S. State Department Announces International Sports Exchange for Athletes with Disabilities

Thursday, August 11, 2011

Recognizing the need for inclusiveness in the world of sports and people-to-people exchanges, the U.S. Department of State's Bureau of Educational and Cultural Affairs announced today that it will bring 14 athletes from Kazakhstan to the United States to participate in an inaugural exchange for athletes with physical disabilities. During the 10-day exchange, these male and female sitting volleyball players will participate in clinics and games with their American counterparts in Oklahoma City, Oklahoma, including with the U.S. Men and Women's Sitting Volleyball teams and USA Volleyball. Sitting volleyball is a Paralympic sport for both men and women. This is the first-ever sports visitor program focused solely on athletes with physical disabilities.

Sports diplomacy creates international exchange opportunities for athletes and their coaches. Participating in the sports visitor program, athletes and coaches from 54 countries have traveled to the United States to interact with their American counterparts and engage on a host of issues, including: balancing academics and athletics; creating opportunities for athletes with disabilities; and empowering women and girls through sports. The Bureau of Educational and Cultural Affairs' SportsUnited Office leads the State Department's international exchange efforts to bring the global community together through sports. Athletes and coaches from a range of sports are chosen to conduct clinics, visit schools, and engage with youth overseas in a dialogue on the importance of an education, positive health practices, and respect for diversity.

The Israel Guide Dog Center for the Blind

The Israel Guide Dog Center for the Blind was started in 1991 by the Winnick Family Foundation. Within that time frame, the center has helped nearly 400 blind and visually impaired people obtain guide dogs. The center is based at Beit Oved cooperative in central Israel. Gary Winnick said, "The wonderful animals trained by the Center profoundly improve the quality of life of blind people every day by providing them with mobility, independence and self confidence. We are proud to support that effort."

The center was established with a Yellow Lab named Tillie in January 1991. The center's first graduate was Haim Tsur, a concert violinist from Jerusalem who graduated in June 1991. Currently, there are 27,000 legally blind Israelis. However, there are only 300 active guide-dog partnerships.

According to Norman Leventhal, who is the president of the Center, "Before the founding of the Center at Beit Oved, visually impaired Israelis had to travel to England or America to obtain a qualified dog, but these foreign animals were principally trained in English and in foreign traffic customs. We now have a world-class facility that provides guide dogs born and raised here in Israel – animals trained to respond to commands in Hebrew and completely familiar with local Israeli streets and safety protocols. That is all made possible by the continued generosity of donors like the Winnick Family."

It's great that the Winnick Family Foundation started the Israel Guide Dog School. It's also interesting that the guide dogs understand Hebrew and understand the traffic laws of Israel. It's a testament to the training process that they use so that the dogs can properly work in their country. Hopefully, the center will continue its successes and be able to create more guide dog partnerships.

This story was brought to our attention by Access Now valued member David New, Chairperson of the Miami Beach Disability Access Commission and the very successful Ability Explosion 2010, which is now preparing to hold Ability Explosion 2011. (See its website at AbilityExplosion.org.) Access Now, Inc. ® continues to be deeply and proudly involved with this extraordinary event.

RESEARCH

Stories in this section focus on progress being made in the fields of science and technology.

Major Breakthrough:

Paraplegic man stands and steps with assistance and moves his legs voluntarily

Rob Summers, a 25-year-old Portland, Oregon man, who was paralyzed below his chest with a C7/T1 injury as a result of a car accident, is standing and stepping with assistance, and voluntarily moving his legs for the first time since his injury. This breakthrough is a result of thirty years of focused scientific research and the unshakeable belief of people like you that we can find treatments and cures for spinal cord injury paralysis.

In this study, continual direct epidural electrical stimulation to the subject's lower spinal cord mimics the signals his brain would normally send to initiate movement. This coupled with intense locomotor training is responsible for Mr. Summers's unprecedented functional recovery.

Mr. Summers is able to stand supplying the muscular push himself, and remain standing, bearing his full weight for up to four minutes at a time and up to an hour with periodic assistance. In addition to some functional recovery, relief from some of the secondary complications of complete spinal cord injury (for example, loss of bladder and sexual function) could be even more significant. Aided by a harness and some therapist assistance, he can make repeated stepping motions on a treadmill. He can also voluntarily move his toes, ankles, knees and hips on command.

This study comes from an 11-member research team led by Susan Harkema, Ph.D. of the University of Louisville and V. Reggie Edgerton, Ph.D. of UCLA. The results are published in the May 20th edition of the British medical journal, *The Lancet*. ([http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(11\)60547-3/fulltext](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(11)60547-3/fulltext))
[Learn more about the study.](#)

But what Christopher Reeve proclaimed more than a decade ago is being proven true today. Nothing is impossible. Life-changing treatments are within our sights. Where it leads and how it impacts the more than five million Americans living with paralysis is just a matter of time and money. I hope you will take a few moments to learn more about this breakthrough and join all of us in celebrating this important day.

Israeli scientists devise way for disabled to control computers & wheelchairs – by sniffing

By Thomas H. Maugh II

Feb. 11, 2011, <http://www.JewishWorldReview.com> (MCT)

The severely disabled, including those “locked in” to their bodies as a result of accidents or disease, may soon have a new way to communicate and move around, Israeli scientists said Monday. By sniffing in and out through their noses, more than a dozen quadriplegics were able to control computers that allowed them to write and to guide a wheelchair, the team reported in the Proceedings of the National Academy of Sciences.

The technology relies on the fact that quadriplegics and others retain control of their soft palates, which regulate breathing through the nose. Even people who are not able to breathe on their own can control the new device by blocking and releasing the flow of air

forced through their noses by a pump. The technology “may provide a host of viable solutions for the growing population of individuals who are severely disabled,” the team wrote.

The device “is pretty ingenious in giving people who can't control their environment another way to do that,” said Dr. Adam Stein, chair of physical medicine and rehabilitation at North Shore-Long Island Jewish Health System in Great Neck, N.Y. It would be particularly valuable for people who have locked-in syndrome, in which they can do little more than flutter an eye, he said. For many other patients, however, alternatives exist, including controlling devices through a breathing tube or with their tongue.

The mechanism is actually relatively simple. Small tubes inserted in the nose monitor sniffs and exhalations, allowing the user to control a computer. To control a wheelchair, for example, two short sniffs signal “forward,” while two short exhalations signal “back.” An exhale followed by a sniff signals “left,” while a sniff followed by an exhale signals “right.” Similar protocols move a cursor on a computer screen for writing.

Neurobiologist Noam Sobel of the Weizmann Institute of Science in Tel Aviv and his colleagues initially studied the device in 96 healthy people, demonstrating that they could control the movement of a cursor with it as easily as they could with a joystick or mouse. About one in four could not work the device properly, however.

The team then installed the device on a wheelchair and demonstrated, first with healthy people, then with disabled, that it could be used to navigate a 150-foot obstacle course with sharp turns and other impediments. Overall, the device has now been tested successfully in 15 severely disabled patients. The Weizmann Institute has filed for a patent on the technology used in the device and hopes to find a marketing partner.

Workplace Personal Assistance Services (PAS) for people with disabilities makes productive employment possible

A recent study published in the *Journal of Rehabilitation* supports the proposition that individual workplace accommodations for users of Personal Assistance Services (PAS) had a positive effect on the users' perception of their ability to perform essential job functions. When rating their own functional ability, the participants used a five-point scale with “1” being “Not Limited at All” and “5” as “Substantially Limited.” The findings indicated that for people with disabilities considered or implemented PAS accommodations, their self-perception of work ability increased from being “*Substantially Limited*” when no accommodation was offered to “*Not Limited at All*” with accommodations.

Accommodations make a difference. Once implemented, workers' perceptions of their own functional abilities increase. Though only a small proportion of employees with disabilities require PAS, effective PAS can be vital for them. View the entire report, at http://findarticles.com/p/articles/mi_m0825/is_4_76/ai_n56197956/?tag=content;col1.

Vehicle Production Group Starts Production of MV-1®

Thursday, August 18, 2011

MIAMI--([BUSINESS WIRE](#))--The Vehicle Production Group LLC (VPG) announced the start of production for the “First Mobility Vehicle”, MV-1, the first and only factory-built and assembled vehicle which meets or exceeds the vehicle guidelines of the Americans with Disabilities Act. The MV-1 will be available in either gasoline or Compressed Natural Gas (CNG) powertrains. Deliveries to customers will begin by the end of September 2011.

Fred Drasner, Chairman of VPG, said “We are proud to be the first manufacturer to provide people with mobility issues a purpose-built vehicle that meets the same expectations that all new car buyers have; ease of entry and exit, an exceptional ride, state of the art technology and unprecedented reliability, quality and durability.” The MV-1 is being assembled at the

AM General Commercial Assembly Plant in Mishawaka, Indiana. Rick Smith, President-Commercial Business for AM General, expressed his enthusiasm; "AM General's workforce is eager to begin production and be part of the MV-1 story. We believe the MV-1 will very quickly become an iconic vehicle setting a new standard against which all other paratransit vehicles will be measured."

The MV-1 features a 56-inch high by 36-inch wide side door opening for easy wheelchair or motorized scooter entry and exit via a wide deployable ramp with a 1200 pound capacity that quickly and easily stores beneath the floor inside the vehicle. The vehicle's ramp is available in either a manual or powered version. The MV-1 can accommodate a passenger in a wheelchair and another five occupants, with an optional rear facing jump seat.

Go Green with Optional CNG

The MV-1 is also the only ADA compliant vehicle with a CNG fuel delivery system option. Since the system is factory installed, the MV-1 with the CNG option meets all government safety and crash test requirements and maintains the same durability, reliability and quality as the gasoline-powered vehicle, while reducing operating expenses. The CNG fuel system delivers an estimated 290-mile range by virtue of three lightweight tanks seamlessly integrated into the vehicle's design, providing customers with a more cost effective and environmentally conscious ownership option without sacrificing significant driving range.

About The Vehicle Production Group LLC

VPG is headquartered in Miami, Florida. Additional details regarding the company or the MV-1, including its pricing, specifications and available options can be found at the company's website at www.vpgautos.com or call 1-877-MV1-FORU (1-877-681-3678). Also contact Mark Weynands | info@vpgautos.com | 786-230-2111.

About AM General LLC

AM General designs, engineers, manufactures, supplies and supports specialized vehicles for commercial and military customers. AM General has more than six decades of experience meeting the changing needs of the defense and automotive industries. More information can be found at www.amgeneral.com or contact Celeste Ross | celeste.ross@amgeneral.com | 574-284-2930.

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