

**Phyllis F. Resnick, President**

A Florida Not-For-Profit  
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Aventura, Florida 33180

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JUNE, 2009

JUNE, 2009

**NEWS! NEWS! NEWS!**

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WE CONTINUE TO GROW NATIONALLY  
**(NATIONAL GROWTH = NATIONAL VICTORIES!!!)**

JUNE, 2009

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(Bobby-Approved)

**\*\*\*\*Please Note\*\*\*\***

**YOU MAY NOW FILL OUT OUR MEMBERSHIP FORM  
DIRECTLY ONLINE AT [WWW.ADAACCESSNOW.ORG](http://WWW.ADAACCESSNOW.ORG)  
THE MEMBERSHIP FORM IS ALSO ATTACHED AT  
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**“ACCESS NOW, INC.”<sup>®</sup>**  
(a Florida not-for-profit, 501(c) 3 Corporation)  
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**Membership Form**

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

**\*\*\*\*JUST GO TO OUR WEBSITE SHOWN ABOVE AND CLICK ON**

**\*\*\*\* “MEMBERSHIP” LINK \*\*\*\***

Date \_\_\_\_\_

Name **(PLEASE PRINT)** \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZipCode \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_

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

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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”<sup>®</sup> (if from the internet, please tell us the site):

SIGNATURE \_\_\_\_\_

**PLEASE SIGN!!!!!!!!!!!!**

# ACCESS NOW, inc.®

A Florida Not-For profit, 501(c) 3 Corporation

**PLEASE DIRECT CORRESPONDENCE TO:**

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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

June, 2009

Dear Reader:

Once again, we hope that 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.) 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](http://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.<sup>®</sup>  
Phyllis F. Resnick, President

## NEWSLETTER UPDATE – JUNE, 2009

FROM PHYLLIS F. RESNICK, PRESIDENT

**HELLO, AGAIN, EVERYBODY!!!!**

Please allow us to commence by addressing the matters of costs and trees. As the costs of printing and paper continue to rise and the loss of trees continues to grow, we have been thinking of sending this newsletter electronically ONLY, to those who have e-mail, while continuing to send it by postal mail to those who do not. (Or, in the alternative, one could log on to our website and read it there.) If you would like to receive future newsletters by email or via the website, rather than in paper form, please send us an email ([phyllis@adaaccessnow.org](mailto:phyllis@adaaccessnow.org)) indicating so and we will then cease sending all future newsletters by postal mail, except to those who wish to continue that way. Thank you for your cooperation!

Well, another 6 months have passed since our last newsletter and much continues to happen in the world of "Access Now"®. We have had several Class Action Fairness Hearings, a trial and many Settlements. It has been an active, interesting, challenging, sometimes aggravating, but mostly gratifying time! Some things are happening in the overall A.D.A. (Americans with Disabilities Act) world as well; more about all of the above later in this newsletter.

We would like to point out to those of you who are receiving this newsletter for the first time that, sadly, many entities continue to fail to comply with the A.D.A., despite the fact that the law was enacted in 1990. As we have said before, we continue to press on with cases against a variety of entities. On a continuing basis, virtually daily, we receive complaints from disabled persons who are routinely being denied their rights under this civil rights law. There is no such thing as a "large" or "small" case, only a large or small entity and we take pride in the fact that we do not limit our efforts to either category. The resolution of high profile cases of legal "first impression", as well as of those involving neighborhood businesses have a great impact on the daily lives of the disabled among us (although we want to make clear that it is not our aim to put anyone out of business.)

### NOEL NEUDECK – REFLECTIONS ON A FIGHTER

I want to begin this issue by paying tribute to Noel Neudeck, one of the most tenacious leaders of our movement. Noel died two years ago in San Diego, California. He was 70 years old.

We had difficulty getting information regarding Noel's passing, but our late tribute in no way detracts from our admiration of the things he accomplished for our community during his life of service.

The first thing one found out about Noel was that he knew the law. That meant he knew when public officials or business owners were not complying with their legal obligations. And when they chose to ignore the law, Noel let them know they were not going to get away with it. Over four decades Noel was a tireless advocate for the disabled community. His monuments are the numerous public venues now accessible to the disabled community through his efforts.

Noel was also a man who didn't mince words. Some may have labeled his style "confrontational", but he got results. When the City of San Diego built Qualcomm Stadium without complying with disability access standards, Noel refused to give them a free pass. He sued, and the city made \$6.5 million in accessibility improvements to the stadium. Noel's point was that *the law is the law*, and not even government is above the law! If it took "confrontation" to drive that point home, Noel would have responded, "So be it!"

Noel was not always a rabble-rouser: That was just one tool he used to achieve his goal of demolishing barriers. He toiled as far back as the early-1970s in the California Department of Transportation working with state architects designing curb ramps to ease travel for wheelchair-users. In this aspect Noel was one of the true pioneers who presaged the Americans with Disabilities Act (ADA). I believe he possessed a prescient knowledge of how the law could catch up with and support the needs of the disabled community. Noel knew instinctively that architectural design, political advocacy and legal action were always different arrows to be drawn as needed from his equal rights quiver.

We miss – and will continue to miss – Noel’s robust advocacy. However, he has taught us that we can never be afraid to demand what is rightfully ours. To do so we cannot focus only on the trials of today, but we must prepare for tomorrow’s tribulations as well. Noel’s “confrontational” tactics worked so well because he was always prepared for the battle to come.

Rest well, Dear Friend.

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**AND NOW, THE UPDATE:**

**Membership** – We now have 958 members representing 47 states and Puerto Rico. We are also proud to claim members in Canada, Hong Kong, Australia. Our Board of Directors stands at 40, our Executive Committee at 8, our Attorneys represent 4 law firms and our Consultants number 6. We want to acknowledge here our debt to 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 for the efforts of our First Vice-President, Marla Dumas. 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 my assistant, Thomas Miller, for undertaking the task of composing and typing the bulk of this newsletter. I couldn’t do it without him!!

**A BRIEF OVERVIEW OF OUR LITIGATION:**

Since our September Newsletter, Access Now<sup>®</sup> has made progress in settling cases in several states. We have filed a total of 974 cases since our inception. Presently, there are 136 cases with outstanding Settlement Agreements, requiring alterations or modifications which in several cases should be completed by July 1, 2009, 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<sup>®</sup> has entered into **16 additional settlements** to make properties A.D.A.-compliant. They include:

Hospitals	15
Transportation	1

Access Now<sup>®</sup> continues to assert itself nationally in scope. The 7 states in which cases have been settled in the last six months range from the Southeast to the Pacific shore. Our headquarters state of Florida accounted for 12.5% of settlements over the past six months.

We will keep 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 situations where access continues to be denied. We remain 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:

Transportation

Cunard Line, Limited                      Miami, FL

Hospitals (# of beds)

South Fulton Medical Center (356)	East Point	GA
Sierra Vista Regional Medical Center (186)	San Luis Obispo	CA
Los Alamitos Medical Center (167)	Los Alamitos	CA
Delray Medical Center (493)	Delray Beach	FL
Hilton Head Medical Center (93)	Hilton Head	SC
Coliseum Psychiatric Center (350)	Macon	GA
Dauterive Hospital (103)	New Iberia	LA
Emory Johns Creek Hospital (110)	Johns Creek	GA
Fairview Park Hospital (175)	Dublin	GA
Kingwood Medical Center (197)	Kingwood	TX
Menorah Medical Center (158)	Overland Park	KS
Overland Park Regional Medical Center (343)	Overland Park	KS
Rapides Regional Medical Center (323)	Alexandria	LA
Texas Orthopedic Hospital (9)	Houston	TX
Wesley Medical Center (38)	Wichita	KS

Below is an article about our law firm responsible for these cases.

## ADA lawsuit forces changes at Wesley Medical Center

BY KAREN SHIDELER

*The Wichita Eagle*, Posted on Friday, Mach. 13, 2009

Wesley Medical Center will make hundreds of changes – most of them minor – to its facilities over the next few years as part of a settlement in a class action lawsuit over accessibility. The lawsuit was filed in Florida about eight years ago against HCA, which owns Wesley. All of HCA's 165 hospitals and 112 outpatient centers are part of the lawsuit.

Miami attorney Miguel de la O said Wesley was not one of the HCA facilities originally involved. De la O and his law firm represent ADA Access Now and other plaintiffs in the lawsuit. Wesley and nine other HCA properties, including Overland Park Regional Medical Center and Menorah Medical Center in Overland Park, are in the latest round of proposed settlements.

The settlements include anyone with any kind of disability who has sought or will seek access to HCA properties. No monetary damages are being paid. "To HCA's credit, they really partnered up with our client" and agreed to remove all architectural barriers found by inspectors, de la O said.

He said inspectors have been going over HCA properties inch by inch and noting changes that need to be made. Once the barriers have been identified and remedies suggested, they're listed in a proposed settlement that then is subject to a court hearing. An April 17 hearing in Miami is set for the latest 10 properties. In Wesley's case, the proposed changes fill more than 200 pages. They include items such as courtesy phones that don't have volume controls; grab bars that are too high in Health Strategies locker room showers; a lack of Braille signs in a Birth Center play

area; and grasp-and-turn doorknobs in the Wesley Medical Towers building. Each doorknob, grab bar and other barrier is listed separately, which is why the list is so long.

Wesley spokesman Paul Petite said the medical center has several years to correct the problems but "we'll get it done much more quickly than that." He said work would start as soon as the settlement agreement is approved. As de la O did, Petite noted that the settlement had been a cooperative process and that HCA was making every effort to comply with the Americans with Disabilities Act.

De la O said about three-quarters of the HCA properties already have been through the process. "We're near the end," he said. "I think we may have a handful of facilities to still inspect."

The law firm and ADA Access Now have filed similar lawsuits against other hospital chains, including Tenet Healthcare and Catholic Healthcare West.

Reach Karen Shideler at 316-268-6674 or [kshideler@wchitaeagle.com](mailto:kshideler@wchitaeagle.com)

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**NOTABLE CASES** – There are some cases that are especially important because of their value as precedents or because they remove significant numbers or types of barriers. Several of those types of cases are listed below. *Please remember that most defendants in non-class action cases insist on confidentiality as a condition of signing settlement agreements.* Therefore, we cannot discuss those cases by name, although they number quite a few. However, several of them are included in the cases listed above.

1. **Hospitals** – We continue to make significant progress in this area. The total of 15 Tenet Healthcare Corporation and Hospital Corporation of America (HCA) facilities listed in this newsletter brings to 147 the total adjudicated at Fair Hearings over the past two years. The 15 facilities have a total of 3,100 beds in seven states. As a consequence, over 27,000 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.

We want to give much deserved praise to the firm of de la O, Marko, Magolnick and Leyton, and particularly to Daniel Leyton and Charles D. Ferguson, for their stellar work in pursuing all the hospitals listed above and many others still in the pipeline!

(Again, we direct your attention to the article above.)

2. **Cunard Line, Limited** – This case represents the culmination of another cruise line case in the aftermath of the Supreme Court's 2005 *Spector v. Norwegian Cruise Line Ltd.* case stating that the A.D.A. applies to foreign flag cruise ships that depart from and return to United States ports. The Cunard Line case is especially important since the Cunard brand is under the Carnival corporate umbrella with many well-known names in the industry, including Carnival Cruise Lines, Holland America Line, Princess Cruises and Seabourn Cruise Line in North America. The settlement encompasses the Queen Elizabeth 2 and the Queen Mary 2, two of the most notable ships afloat.

3. **Emory University** – Access Now® and member Kami Barker sued Emory University and its architects and engineers for denial of access in university housing projects. On March 2, 2009, the U.S. Court of Appeals for the 11<sup>th</sup> Circuit upheld the district court's decision that the designer of the Ms. Barker's on-campus housing complex at Emory University had not violated the FHA but that the builder of the complex had committed FHA violations. While we are disappointed not to have prevailed on appeal, this victory with respect to the builder will serve as a foundation



for future forays into this legal arena. In connection with the cruise line cases and the Emory University case, all kudos to our attorney, Matthew Dietz. We also wish to acknowledge the outstanding work of two additional firms with which we work; Schwartz, Zweben, Zwilling and Rosen, Switkes and Entin.

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**OTHER 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 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!

## **Deaf Woman Wins Discrimination Case against Hospital**

By Theo Karantsalis

MIAMI -- A deaf woman who waited two days before receiving proper care won a discrimination lawsuit against a hospital in Palm Beach federal court. Pennie Fuller, 40, who is deaf, cannot read and uses sign language to communicate, alleged that Wellington Regional Medical Center intentionally discriminated against her based on her disability.

Fuller was rushed to the emergency room at Wellington in May 2004 after fracturing her knee and waited two days in extreme pain because the hospital did not have access to a qualified sign language interpreter, according to the complaint filed on Dec. 21, 2005. When Fuller used the call button to get the attention of the hospital staff, they "would attempt to respond on the intercom," according to the complaint. Fuller alleged she experienced humiliation and discrimination in violation of her civil rights.

On Dec. 18, a jury awarded Fuller \$76,400 to compensate her for physical and mental pain and anguish as a result of the discrimination by Wellington. "Hospitals are required to provide qualified sign language interpreters when necessary to ensure effective communication with individuals who are deaf," said Matthew Dietz, Fuller's co-counsel and a disability rights attorney based in Miami. "The deaf community is entitled to have the same quality of care and treatment as the hearing community."

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Tuesday, March 3, 2009

## **ADA lawsuit settled, city to make repairs**

MIAMI – A disabled man settled a lawsuit filed in Miami federal court against the city, county and state over access to roads near his home. The lawsuit, filed September 22, 2008, alleged that Theo Karantsalis, 47, a librarian who suffers from multiple sclerosis, was being "denied full, safe and equal access" to sidewalks and bicycle paths in Miami Springs in violation of the Americans with Disabilities Act (ADA).

Karantsalis, acting as his own attorney, negotiated individual settlements with attorneys from the city of Miami Springs, Miami-Dade County and Florida's Attorney General. On February 23, 2009, Miami Springs city leaders announced plans to comply with the ADA that include creating a Disability Advisory Committee, conduct a self-evaluation plan, and install sidewalks along Ludlum Road. Karantsalis filed a notice of dismissal on Dec. 29, 2008.

"Society wins when individuals with disabilities receive equal access to government services," said Karantsalis. Karantsalis is an activist with the National Multiple Sclerosis Foundation.

See the following page for Mr. Karantsalis' heartfelt tribute to Edward S. Resnick.



alterations on their own to comply with the law, instead of the prevalent attitude of waiting for someone to catch up with them.

Thank you, Edward, for teaching me how to become self-sufficient in managing my own accommodations.

*Theo Karantsalis works as a librarian at Miami Dade College and has multiple sclerosis. He is also an activist with the National Multiple Sclerosis Foundation.*

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### ***US Dept. of Justice v. Wal-Mart Stores, Inc.***

#### **A Settlement Agreement: The Service Animals Issue**

On January 16, 2009, the U.S. Dept. of Justice Civil Rights Division (USDOJ) entered into a settlement agreement with Wal-Mart Stores, Inc. under Title III of the Americans with Disabilities Act (Title III) to improve access for persons with disabilities at Wal-Mart stores nationwide. The agreement resolves an investigation initiated after USDOJ received several complaints alleging Wal-Mart had refused to make reasonable modifications to its rules, policies, practices, and procedures for customers with disabilities in violation of Title III. Many of the complaints alleged that persons with disabilities were denied access to Wal-Mart stores or were denied an equal opportunity to shop, free of repeated challenges by Wal-Mart staff, because they were accompanied by service animals. Service animals are dogs and other animals that are individually trained to work or perform tasks for persons with disabilities.

The settlement agreement covers all facilities open to the public located in the United States, including all Wal-Mart stores, Supercenters, Sam's Clubs, and Neighborhood Markets. The settlement agreement, which will be effective for three years, requires Wal-Mart to take several steps to improve access for customers with disabilities, including:

- Wal-Mart's undertaking not to discriminate in violation of Title III and to provide reasonable modifications to individuals with disabilities as required by Title III, such as disability-related assistance such as helping customers in locating, lifting, and carrying items;
- Adoption and implementation of an ADA-compliant policy of welcoming persons with disabilities who use service animals into Wal-Mart stores with little or no questioning and without repeated challenges by Wal-Mart employees;
- Training all employees on Wal-Mart's obligations under Title III to make reasonable modifications for individuals with disabilities and Wal-Mart's new ADA-compliant service animal policy;
- Additional training for store management and People Greeters, since employees in these positions have additional responsibilities under Wal-Mart's new service animal policy;
- Posting of Wal-Mart's new service animal policy on its website and in employee areas at its stores; and
- Establishment of a grievance procedure by Wal-Mart to receive Title III complaints at a toll-free hotline, investigate such complaints and take appropriate corrective action to resolve any noncompliance with Title III.

Under the settlement agreement, Wal-Mart will also pay \$150,000 into a fund to compensate certain individuals with disabilities who filed administrative complaints with the USDOJ alleging Wal-Mart's refusal to make reasonable modifications, including the denial of equal access to persons with disabilities who use service animals. USDOJ will determine which complainants are to receive damages from the fund as well as the amount of damages. Finally, Wal-Mart will pay an additional \$100,000 into a fund for USDOJ to finance a public service announcements to increase public awareness of the access rights of persons with disabilities who use service animals. The nature and scope of the public service

announcement campaign will be determined by USDOJ. The settlement agreement is posted on USDOJ's ADA Home Page at <http://www.ada.gov>.

For further insight into, and a fascinating discussion of, the service animals issue we are happy to direct you to an article beginning at page 34 in the January 4, 2009 issue of *The New York Times* entitled "Creature Comforts" by Rebecca Skloot. You can find the article online at <http://www.nytimes.com/2009/01/04/magazine/04Creatures-t.html>.

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We want to update you on a case from our September 2005 issue. We had opined that there was "cause for concern" over a judge's refusal to grant attorney's fees to a successful A.D.A. plaintiff in *Doran v. Del Taco, Inc.* 373 F. Supp. 2d 1028 (C.D. Cal. 2005). U.S. District Judge Gary Taylor denied attorney's fees under the A.D.A. because the plaintiff had not given a pre-litigation warning notice to the defendant prior to bringing suit so the defendant could cure any A.D.A. violation. We characterized the judge's action, which is NOT required under the A.D.A., as a "judicial end run around Congress' consistent refusal to enact a pre-suit notification requirement."

Well, it looks like the 9th Circuit U.S. Court of Appeals agrees with us. On May 21, 2007, in an unpublished opinion, the appellate court reversed Judge Taylor's refusal to grant attorney's fees. It found that "the district court should have either set a reasonable fee award using [a] flexible, fact-specific approach . . . or given specific, valid reasons for its denial of fees. Instead, it denied fees by subjecting Doran to a requirement not found in the ADA or the case law." The case was returned to the District Court for a decision on attorney's fees that complied with the legal requirements.

This is another instance where a judge's refusal to follow the law has led to the needless expenditure of scarce funds. We hope that Congress' review of the A.D.A. makes clear that rogue judges are not free to impose additional burdens on plaintiffs in these cases.

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Kenneth Kronstadt, a recent graduate from the University of Southern California School of Law, authored a November, 2007 note published in the *University of Southern California Law Review*. Kenneth Kronstadt, *Looking Behind the Curtain: Applying Title III of the Americans with Disabilities Act to the Businesses Behind Commercial Websites*, 81 S. Cal. L. Rev. 111 (2007). The note argues for the applicability of Title III of the ADA to any website engaged in commerce.

As you may know, Access Now, Inc.<sup>®</sup> argued for this very proposition in our 2004 case against Southwest Airlines. *Access Now, Inc. v. Southwest Airlines Co.*, 385 F.3d 1324, (11<sup>th</sup> Cir. 2004). We lost that case, but Mr. Kronstadt's persuasive arguments provide additional ammunition to disability advocates seeking the opportunity to revisit this issue. You can read the full note online at <http://law.usc.edu/students/orgs/lawreview/K.KronstadtLookingBehindtheCurtain.cfm>.

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## GOVERNMENTAL NEWS

### **New ADA Amendments Expand Law's Reach**

On September 25, 2008, President Bush signed into law the Americans with Disabilities Act Amendments Act ("ADAAA"), which became effective January 1, 2009. The ADAAA strengthens protections for employees covered by the Americans with Disabilities Act ("ADA").

Although the basic definition of disability under the ADA remains unchanged, the ADAAA specifies that "[t]he definition of disability shall be construed in favor of

broad coverage of individuals under this Act." Disability is still defined as: 1) a physical or mental impairment that substantially limits one or more major life activities; 2) a record of such impairment; or 3) being regarded as having such impairment. The ADAAA ensures broader coverage of employees by revising several important concepts, including the following:

1. Most mitigating measures are no longer considered. The ADAAA provides that the determination of whether an impairment substantially limits a major life activity must be made "without regard to the ameliorative effects of mitigating measures." In other words, courts may no longer consider the effects of medication, "assistive technology," or employers' accommodations on the impairment in question. Ordinary eyeglasses or contact lenses, however, still will be considered in the impairment analysis.
2. Expanding the concept of "substantially limits." Previously, only those impairments that "prevent[ed] or severely restrict[ed] . . . [the performance of] major life activities" were covered by the ADA. The new law directs the Equal Employment Opportunity Commission ("EEOC") to craft a less restrictive standard for measuring the extent to which an individual is substantially limited in a major life activity.
3. Impairments that are episodic in nature or in remission are now covered. The U.S. Supreme Court previously instructed courts to focus on an individual in his or her present state when determining the presence of a disability. Rejecting this approach, the ADAAA provides that "[a]n impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active."
4. Revising the definition of "major life activities." Prior to the amendments, the task of defining major life activities was left to the EEOC. The new law incorporates a non-exhaustive list of examples into the statute and adds new activities such as eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating.
5. Expanding coverage for employees "regarded as" disabled. Previously, an employee had to prove that because of a disability, an employer regarded the employee as being substantially limited in a major life activity. Under the ADAAA, an employee is protected from discrimination on the basis of an actual or perceived impairment, regardless of whether the impairment actually limits a major life activity. While the ADA formerly focused on the severity of a plaintiff's impairment, the new law frames the inquiry on the employer's motivations in making an adverse employment action.

The ADAAA contains several key restrictive changes. For example, prior to the amendments, courts were divided on the issue of whether an employer had to accommodate employees merely "regarded as" disabled. The ADAAA settles this issue, providing that employers "need not provide reasonable accommodation or a reasonable modification to policies, practices, or procedures to an individual who meets the "regarded as" definition. Moreover, the ADAAA provides that an employee "regarded as" having an impairment that is merely minor and transitory is not afforded any protection. Finally, the amendments expressly foreclose the possibility of reverse discrimination actions made on the basis of an individual's "lack of disability."

The federal Office of Disability and Employment Policy's Job Accommodation Network has developed a resource page <http://www.jan.wvu.edu/bulletins/adaaa1.htm> regarding the ADAAA. This resource page <http://www.jan.wvu.edu/bulletins/adaaa1.htm> is worth viewing as it clearly explains the new legislation and lists practical tips for employers. Many provisions of the ADAAA will be detailed and enforced by the EEOC in regulations to be issued in 2009.

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## OTHER NEWS

### Steve Gold's "Treasured Nuggets of Information"

Steve Gold is very informed and active regarding issues of Medicare, Medicaid and Home Health Care. Steve is a treasure trove of information, and we strongly suggest that you take the time to view his website. Steve's comments can be found at <http://www.stevegoldada.com>. In a February 2009 issue of "Treasured Nuggets of Information", Mr. Gold provides a roadmap for holding your state accountable after it receives The Stimulus Act money:

### The Stimulus Act and Medicaid Services. Information Bulletin #276 (2/19/09)

Is your State crying lack of Medicaid funds? Threatening to reduce Medicaid waivers? Already reduced Medicaid programs? Telling the press that Medicaid funds must be reduced because of a state budget crisis? Here are some possible answers:

You've read about the recently enacted Stimulus Act. It has an entire section regarding "FMAP" the "Federal medical assistance percentage," *i.e.*, the federal money used to match your state's funds for Medicaid programs in your state.

The FMAP has been significantly increased. States' Medicaid programs will have a large increase in federal funds without having to increase their state funds whatsoever.

1. The Stimulus package provides states with enormous FLEXIBILITY. Each state can decide how to allocate this new Medicaid funds. The federal statute imposed virtually no requirements.

Therefore, how your State spends its new Medicaid funds depends on political decisions at your State level - not because of the Stimulus package. If your state tells you that it must spend its Medicaid funds on certain programs or cannot do other programs, they're selling you a lemon!

Advocates must ensure that Stimulus funds increase integration of people with disabilities in the community and do not increase the institutional biases. This is a great opportunity to "End the Waiting Lists" and to move people from institutions to the community.

You must know how your Medicaid office, Governor, and Legislature want to allocate these funds. IF there is a potential ADA violation, it should be stopped, either by direct actions and court orders.

2. A state is NOT eligible for increased FMAP if any of the increased federal funds will go "directly or indirectly" to "any reserve or rainy day fund of the State."

3. With regards to the "eligibility" of persons and "methodologies or procedures" under a state's Medicaid plan, any person who was eligible on, as well as Medicaid programs' methods and procedures in effect on, July 1, 2008, must be maintained in order for your state to be eligible for the increased FMAP.

This is a very important handle. IF your state has imposed restrictive eligibility criteria since July 1, 2008, or changed its Medicaid programs' methods and procedures since July 1, 2008, and IF your state wants to receive the increased FMAP, then eligibility, methodologies, and procedures must be reinstated to what they were on July 1, 2008. Therefore, if your state has, since July 1, 2008, restricted eligibility of programs or changed Medicaid programs' procedures, hold them accountable.

4. States can increase eligibility to persons whose incomes are higher than the income standards [sometimes known as "medically needy"] and receive increased FMAP for these people.

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An update of a previous story from our December 2007 newsletter . . .

The Centers for Medicare & Medicaid Services (CMS) has released a study of states' participation in the Money Follows the Person (MFP) Demonstration program. MFP is a federal program that has authorized \$1.75 billion to support state efforts to move people currently residing in institutions back into their communities and to rebalance their long-term care systems to emphasize home and community-based services rather than institutional placement. (See our article about states' non-participation in MFP in the December 2007 newsletter.) This study chronicles the efforts of the 30 states and the District of Columbia that are participating in MFP. You can find out what your state is doing under MFP (or if it one of the 20 states that have spurned participation in the program) by going to [http://www.cms.hhs.gov/DeficitReductionAct/20\\_MFP.asp](http://www.cms.hhs.gov/DeficitReductionAct/20_MFP.asp).

There is a small mystery regarding the MFP Demonstration program. On its website CMS says that \$1.436 billion in MFP grants have been made to the various states. However, Congress appropriated \$1.75 billion for the program. This leaves \$314 million unaccounted for. If anyone can help with this enigma, please send us an e-mail with the answer. We will let our readership know in the next newsletter.

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. . . As well as from the September 2005 newsletter.

The U.S. Department of Transportation (DOT) has spent over four years issuing regulations implementing the Air Carrier Access Act (ACAA). DOT published a Notice of Proposed Rulemaking (NPRM) on November 4, 2004, to revise its ACAA regulations in 14 Code of Federal Regulations, Part 382 to make foreign air carriers operating to and from the United States subject to most of the disability-related requirements currently applicable to U.S. carriers. DOT issued further NPRMs on September 7, 2005, (to provide greater accommodations for travelers with respiratory disabilities) and February 23, 2006, (to provide additional accommodations for air travelers who are deaf, hard of hearing or deaf-blind). The three now-consolidated rulemakings have been completed. The new regulations will be effective May 13, 2009. We will provide a full update of the new regulations in our next newsletter.

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## **MEDICAL DEVELOPMENTS**

### **Standing Tall**

#### **AN ISRAELI-MADE SUIT THAT LOOKS LIKE AN EXOSKELETON RAISES PARAPLEGICS OUT OF THEIR WHEELCHAIRS AND LETS THEM WALK AGAIN**

A new Israeli invention is helping paralyzed people walk again. Something of a mix between the exoskeleton of a crustacean and the suit worn by comic hero Iron Man, the device, called ReWalk, helps paraplegics – people paralyzed below the waist – to stand, walk and climb stairs.

One of these new ReWalk users is former Israeli paratrooper Radi Kaiof, who was injured in 1988 while serving in the Israel Defense Forces. "I never dreamed I would walk again," Kaiof told Reuters. "After I was wounded, I forgot what it's like. Only when standing up can I feel how tall I really am and speak to people eye to eye, not from below."



ReWalk was invented by engineer Amit Goffer, founder of Argo Medical Technologies, a small Israeli high-tech company. "It raises people out of their wheelchair and lets them stand up straight," Goffer said of his contraption. "It's not just about health, it's also about dignity."

When Goffer speaks about dignity, he understands all too well. He was paralyzed in an accident in 1997 but he cannot use his own invention because he does not have full function of his arms.

ReWalk, which requires crutches to help with balance, consists of motorized leg supports, body sensors and a backpack containing a computerized control box and rechargeable batteries. The user picks a setting with a remote control wrist band – stand, sit, walk, descend or climb – and then leans forward, activating the body sensors and setting the robotic legs in motion.

The ReWalk is now in clinical trials in Tel Aviv's Sheba Medical Centre, and Goffer said it will soon be used in trials at the Moss Rehabilitation Research Institute in Pennsylvania. Slated for commercial sale in 2010, ReWalk will cost as much as the more sophisticated wheelchairs on the market, which sell for about \$20,000, the company said. To learn more about the ReWalk system, visit [www.argomedtec.com](http://www.argomedtec.com).

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## **FYI . . .**

The Performers With Disabilities (PWD) Tri-Union Committee of Screen Actors Guild (SAG), the American Federation of Television and Radio Artists (AFTRA) and Actors' Equity Association (AEA), announced the launch of a major disability rights campaign to increase the visibility and equal employment opportunities for actors, broadcasters and sound recording artists with disabilities throughout the entertainment and news media – I AM PWD (Inclusion in the Arts Media of People With Disabilities).

I AM PWD is a global civil rights campaign seeking equal employment opportunities for artists and professionals with disabilities throughout the entertainment and news media. It is dedicated to ending the discrimination and exclusion of performers and broadcasters with disabilities by uniting labor, industry, community and governmental allies in the fight to combat continuing discrimination against people with disabilities. Over the course of the three-year I AM PWD campaign, the group will coordinate with these groups as well as the entertainment and media industries and the general public in an effort to open up equal opportunities for disabled performers in the entertainment industry.

Robert David Hall, National Chair of the Tri-Union Performers with Disabilities Committee said, "I'm fortunate to have a good career as an actor and creative artist. The normal struggles any performer faces, however, are complicated ten-fold by our industry's reluctance to include people with disabilities in the full landscape of entertainment. In the 21st century, media is the world's common cultural environment. Society's values and priorities are expressed and reflected in film, television, theatre, news and music. If you aren't seen and heard, you are invisible. People with disabilities are largely invisible within the arts and media landscape. I AM PWD will awaken the general public to the lack of inclusion and universal access for people with disabilities by uniting with a network of industry, labor, community and government allies."

Those interested in the campaign are urged to join the I AM PWD network by signing up at [www.IAMPWD.org](http://www.IAMPWD.org). Others can learn more about the organization at the website.

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## **"NEWS YOU CAN USE"**

**These items were brought to our attention by our members:**

**New member Oliver Cowdery has alerted us to his "Webtech-Directory" website that contains several informational links to websites specializing in services for the**





**\*\*\*\*PLEASE DON'T FORGET THE MEMBERSHIP FORM!!!\*\*\*\***

**AND**

**\*\*\*\*PLEASE LET US KNOW IF IN THE FUTURE YOU WANT TO RECEIVE THIS ELECTRONICALLY ONLY: IT LOWERS OUR COSTS AND SAVES THE TREES\*\*\*\***

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Phyllis F. Resnick, President