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EGREGIOUS ADA LITIGATION SCHEME HIGHLIGHTS NEED FOR CLARITY ON LAW'S APPLICATION ONLINE

by Cory L. Andrews

On the first day of the October Term 2019, the U.S. Supreme Court denied a [Domino's Pizza petition](#) asking it to resolve a split among the federal circuits over whether websites are "places of public accommodation" under the Americans with Disabilities Act (ADA). Even though the statute predates the Internet and contemplates only physical structures when prescribing private entities' duties, the Ninth Circuit held that Domino's failure to make its website "accessible" to a visually-impaired Californian violated the ADA.

[Commentators](#) have rightly predicted that the Domino's *cert* denial will further incentivize the filing of ADA suits against business websites, an area of litigation already fraught with dubious claims. That unfortunate outcome means we'll probably see more suits like those brought by Miami attorney Scott R. Dinin. As described in an August 23, 2019 federal sanctions order, Dinin, along with his hearing-impaired client, Alexander Johnson, hatched a scheme "to dishonestly line their pockets with attorney's fees from hapless defendants under the sanctimonious guise of serving the interests of the disabled community."

Dinin has brought at least 653 cases alleging ADA violations. 131 of those cases featured Johnson as the plaintiff. While some of those lawsuits were premised on non-compliant websites, Dinin's specialty has been suing gas-station owners whose gasoline pumps included screens with video content. Those suits alleged that the videos' lack of closed captioning violated Title III of the ADA (as well as Florida's Civil Rights Act). As is common, many of Dinin's ADA-shakedown targets settled. But a few fought back and, in doing so, exposed Dinin and Johnson's scheme. The details—unearthed in discovery and featured prominently in several of U.S. District Judge Paul C. Huck's pre-trial orders—are truly revelatory.

First, Judge Huck found that by failing to exhaust Johnson's administrative remedies, as required for claims under the Florida Civil Rights Act, Dinin knowingly pursued frivolous civil claims in federal court.

Second, Judge Huck found that, contrary to the claims of Dinin's (now-scrubbed) [website](#), neither Dinin nor Johnson were crusaders for "the RIGHTS of the disabled" but rather had "abused the ADA solely for their own financial gain." In the majority of agreements settling Johnson's suits, the gas-station owners paid only attorneys' fees and costs while providing no remedial relief. In several settlements, the only remedial relief obtained was that the gas station agreed to discontinue the videos.

Cory L. Andrews is Vice President of Litigation of Washington Legal Foundation.

Although eliminating the videos won't provide Johnson with the closed-captioning he demanded, it will bring the targeted gas station owners into compliance with the ADA. But Dinin and Johnson didn't want their targets to be compliant. In an email to Dinin providing feedback on a draft complaint, Johnson told Dinin to remove a statement alleging that the defendant failed to turn off the gas-pump videos after Johnson's visit: "[W]e do not need to sabotage our other cases by providing defendants a defense." As Judge Huck put it, Johnson didn't want to "kill the goose laying their golden eggs."

Third, Judge Huck found that Dinin systematically inflated his attorneys' fees and misled the federal courts about his experience. For example, he billed 6.2 hours at \$400 per hour to draft and file a complaint that was virtually identical to other ADA complaints he'd filed. He billed 1.8 hours to change the name of a defendant in that same complaint. And he billed 1.5 hours to make minimal wording changes that Johnson recommended. To justify his \$400 hourly rate, Dinin claimed to be a highly qualified, experienced litigator. In one case, he claimed to have started his legal career in 1996. In another, he claimed to have practiced law since 2001. In reality, he was not admitted to The Florida Bar until 2008. Arguing against imposing sanctions, Dinin chalked up his "inadvertent[ly]" improper conduct to his "inexperience and incompetence," which rendered him unable "to properly run a law firm."

Last, and certainly not least, Huck exposes Dinin's plainly unethical arrangement with Johnson. If the ADA settlements generated only attorneys' fees and costs, Judge Huck asks in his sanctions order, "What's in it for Johnson?" It turns out that Dinin split his fees 50/50 with Johnson in violation of a Florida Bar rule. Other than his disability benefits, those fees were Johnson's sole source of income.

Judge Huck imposed a range of sanctions on Dinin and Johnson. Besides dismissing the two lawsuits before him, Judge Huck ordered the attorney and his client to disgorge all fees and costs recovered in every one of the gas-pump cases. The court also fined Dinin and Johnson \$59,900 each, payable to a disabilities-rights group in Miami. Because Johnson claims an inability to pay, he must perform 400 hours of community service with a disabilities-rights group. Judge Huck also enjoined the pair from filing an ADA complaint in any jurisdiction without his court's permission. Finally, Judge Huck referred Dinin to the Florida Bar for investigation.

Dinin and Johnson's conduct was so egregious that one might conclude it's an aberration. But ADA litigation abuse has been on the rise for more than a decade. Drive-by ADA lawsuits have been the subject of a [60 Minutes](#) report, [investigations and interventions](#) by state attorneys general, and laws in states like [Ohio](#) and [Florida](#) requiring that plaintiffs give businesses notice and an opportunity to cure any alleged violation.

In the early days of ADA litigation abuse, attorneys and their clients would gas up the car and drive around town to identify physical premises that were out of compliance. Today, an ADA attorney, still in his pajamas, can surf the Internet in search of defendants from the comfort of his own bed. ADA [suits involving websites](#) grew 177% (from 814 in 2017 to 2,250 in 2018). [Some observers](#) have suggested that DOJ could mitigate problems of regulatory uncertainty and burdensome litigation if only it would promulgate a uniform Internet-accessibility standard under the ADA. But that expedient view of the problem overlooks a glaring defect—Congress never authorized such a rule. Sooner or later, the Supreme Court will need to intervene.