

## **You Can Successfully Defend Disability Lawsuits**

by Thomas B. Cummings, Attorney

In 1991, the United States Congress enacted the Americans with Disabilities Act (ADA), intending to require places of public accommodation to provide accessible facilities for disabled Americans. Congress hoped to provide equal access for people with disabilities concerning various “architectural barriers” that disabled people could encounter. Conditions included parking in passenger loading zones, curb ramps, stairs, elevators, drinking fountains, toilets, handrails and grab bars, signage, telephones and counter heights, among other subjects.

Unfortunately, a small group of disabled persons, and a small group of lawyers, have filed multitudes of lawsuits against small businesses under questionable circumstances.

Some disabled people, and some lawyers, may aggressively file lawsuits where they perceive some “architectural barrier” to a disabled person, even if the disabled person was not impeded in any way by the claimed condition. Some disabled people appear to spend their time looking for potential violations of the ADA, and upon locating such a potential condition; they will photograph the condition and then promptly notify an attorney to file a lawsuit.

Typically, a disabled person who files a lawsuit under the ADA has suffered no actual damages. The disabled person and attorney attempt to negotiate early settlements for somewhere between \$4,000.00 and possibly \$15,000.00. The Federal law establishes a guideline for damages if there is a violation, with damages to be three times the handicapped person’s “actual damages”, but no less than \$4,000.00 minimum.

The bigger exposure in defending an ADA suit is a claim that the attorneys can make for attorney fees under the California Civil Code. Attorney fees often can be in the area of \$20,000.00, even where there is no claim for actual damages sustained by the disabled person.

As business owners, you might be sued by a disabled person, even where you are in compliance with the ADA. The plaintiff in such a case and the attorney can use the threat of an award of attorney fees against your business to attempt to negotiate an early settlement in the \$4,000.00 to \$15,000.00 range.

### **Defense of ADA Lawsuits**

There is good news regarding the defense of ADA lawsuits. These cases can be successfully defended if your business is in compliance with the ADA. Our office recently went to trial on an ADA case and received a defense verdict in favor of our client by a 12 to 0 vote, after the jury deliberated for only 30 minutes.

If a person’s claim is not valid, juries in Orange County will not be sympathetic with the plaintiff, even if the plaintiff is disabled.

Juries still typically come up with the right decision, and bizarre jury verdicts such as in the O.J. Simpson case are the rare exception, rather than the rule.

If you are sued by a disabled person on an ADA claim, if your business is in compliance and there are no architectural barriers, you can send a message to that person and the attorney that you will defend the case aggressively. If the case is defended successfully, the law allows you to collect all of your attorney fees back from the person

and the attorney who brings the non-meritorious lawsuit. There is even the possibility you can recover a penalty or sanctions from the disabled person and the attorney.

If the claim brought against your business is non-meritorious, and a jury rules in your favor, you will not only recover your attorney fees and costs from the opposing party, but the jury verdict also sends a message to other persons and other attorneys that they should not be filing lawsuits that have no merit. The successful defense of one lawsuit may prevent the filing of other suits.

Should you be sued by a disabled person on an ADA claim, fully investigate that claim to determine whether it has merit, or whether it is meritless. If meritless, you should consider an aggressive defense and stand up for your rights.

You can successfully defend such a lawsuit, and hopefully discourage other people from pursuing other lawsuits against you or your colleagues.

*Thomas Cummings has defended civil lawsuits since 1969, and has successfully obtained defense verdicts in many cases with very high monetary exposure to his clients. Mr. Cummings has tried over 130 civil jury trials during his career. He is a member of the prestigious American Board of Trial Advocates, and currently sits on the Board of Directors of that organization. The Law Offices of Thomas B. Cummings can provide you with extensive litigation experience in the defense of any type of money damage lawsuit, should you be the target of any type of civil litigation. Mr. Cummings does provide a one hour free consultation on specific inquiries by members of the AOA. The firm can be reached at (714) 634-1777. The firm's website is at [www.tomcumminglaw.com](http://www.tomcumminglaw.com).*