



The Sports Bulletin

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Negotiating the Call: What the Americans with Disabilities Act may demonstrate as trends in finding the line between equal participation and safety

The United States' legal landscape is often a trendsetter in litigation. However, the issue of insuring risk is global. Safety protocols are key considerations.

Avoiding suit is another consideration, which typically stemmed from personal injury but now has expanded to rights not to be discriminated.

What happens when safety protocols are perceived as discriminatory. As some operators have said, they would rather an ADA case than a wrongful case any day.

But ADA cases usually come in clusters or classes of actions and can be extremely expensive to defend and the duty has been placed on the operator to justify safety protocols in the light of being non-discriminatory.

In the United States, two theme parks in particular have been involved in some noteworthy developments from which we can learn and advise.

In the first case, *Campbell v. Universal City Dev. Partners, Ltd.*, (11th Cir Jul7, 2023), a patron born with one hand sued claiming violation of the Americans with Disabilities Act. He was not permitted to get on a water ride known as the "Krakatua Aqua Coaster" because he was told he needed two hands in order to ride.

Originally, the District Court entered summary judgment in favor of Universal based on the argument that Universal did not violate the ADA because it followed the standards and recommendations set forth by the manufacturer. This was in adherence to the law of the State of Florida, that requires such adherence to the manufacturer recommendations.

On appeal however, the decision was vacated and remanded back for further hearing. The basis for the remand was that Universal could not demonstrate why the absence of a limb would pose any real risk for anyone riding the ride. While a prosthetic could come loose and strike someone, in this case, for two hands to

be required, there had to be a real risk as to not having two hands to hold on or steer, but none of those requirements were demonstrated.

This puts the proof of the need for manufacturers recommendations being necessary. One would not think that compliance with manufacturers recommendations and State law would subject the operator to Federal litigation, but indeed, it had.

This remand underscores the importance of the operator working with the manufacturer to clearly set forth the need for the safety protocol. It is the manufacturer that sets the requirements and often is the author of the required safety signs and protocols. However, it was the Park that denied access and as per this ruling, cannot merely rely on blanket recommendations but must demand and communicate the actual risk that justifies them.

This case also demonstrates the importance of ensuring eligibility criteria be in accordance with ADA's directives and the United States legal questions of State Safety laws versus Federal Discrimination Laws.

California is known for its Class Action suits including what we refer to as "drive by" suits.

In those cases, a person comes to a park with the purpose of measuring width of access or other ADA accessibility requirements and when finding discrepancies of even an inch, finds a class of persons who will claim discrimination.

Most of these cases can be thrown out based on standing to sue alone. However, a second case to watch is the case of I.L. v. Six Flags Entertainment Corp. and Magic Mountain, LLC.

This class action involved persons who sued for the Park's requirement of 48 hour notice to meet accommodation requests among other actions involving medical records and disclosures of disability for privacy reasons.

The Complaint for the case alleges the following as the discriminatory requirements:

"Specifically, in 2020, Six Flags implemented its current procedures for making accommodation requests at Defendants' amusement parks in the United States, called the "Attraction Access Program." Under the Attraction Accessibility Program, Defendants require guests with disabilities to register ahead of their visits to Six Flags theme parks across the U.S. with the International Board of Credentialing and Continuing Education Standards ("IBCCES"). Despite its name, the IBCCES is a private, for-profit company that is not affiliated with any governmental agency or regulatory body... To obtain an accommodation at the Amusement Parks at issue, guests must register online with IBCCES and obtain an Individual Accessibility Card ("IAC") at least 48 hours in advance of their park visit. Further, as part of the online registration process, guests must disclose sensitive personal information and provide private medical documentation in support of their accommodation requests."

The lawsuit contests Six Flags' Attraction Access Program's prerequisites, maintaining that the prerequisites unduly burden persons with disabilities, violating the ADA.

The line to be negotiated for equal access to public accommodations can often butt up against safety protocols. The key is to focus on not just the what, but the why, of the protocol. If the necessity for it and the scope of it can be clearly defined, the chances of being sued for being "too safe" without reason are reduced.



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