

## **ELEVENTH CIRCUIT HOLDS PRIOR SETTLEMENT DOES NOT RENDER NEW WEBSITE ACCESSIBILITY CASE MOOT**

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The Eleventh Circuit Court of Appeals has held that a prior settlement agreement, pursuant to which a defendant has agreed to improve website accessibility, does not necessarily render moot a new website accessibility lawsuit.

In *Haynes v. Hooters of America, LLC*, Case No. 17-13170 (11th Cir. June 19, 2018), the Court of Appeals concluded that the “plaintiff’s claims are not moot” as a result of a settlement agreement between Hooters and a different plaintiff in an almost identical prior lawsuit that required Hooters to improve accessibility of its website within 12 months.

As we previously reported, the district court had granted Hooters’ motion to dismiss the action, on grounds that Hooters was in the process of actively implementing a remediation plan for its website, and therefore the prior agreement rendered the new ADA action moot.

The Eleventh Circuit rejected this argument, however, and held that “this case is not moot.” The Court stated that “Hooters’ assurance to an unrelated third party to remediate its website does not alone moot Haynes’ claim for relief.”

The Court noted that while Hooters may be in the process of updating the accessibility of its website, “there is nothing in the record demonstrating that Hooters has successfully done so.”

Moreover, the Court relied upon the fact that the present plaintiff sought injunctive relief requiring Hooters to maintain the website in a complaint condition. In contrast, “nothing in the [prior] agreement requires Hooters, ... to continuously update and maintain its website to ensure it remains accessible to the blind,” particularly since the district court did not retain jurisdiction to enforce the settlement agreement.

Of particular interest is the fact that, while the Department of Justice still has not issued regulations concerning website accessibility, and has removed the issue from rulemaking, the Court referred to the Website Content Accessibility Guidelines (“WCAG”) 2.0 developed by a private industry group as “the recognized industry standard for website accessibility.”

On June 20, a bi-partisan assembly of 103 members of the House of Representatives, led by Congressmen Ted Budd (R-NC) and J. Luis Correa (D-CA), wrote a letter to Attorney General Jeff Sessions, urging the U.S. Department of Justice (“DOJ”) to “state publicly that private legal action under the ADA with respect to websites is unfair and violates basic due process principles in the absence of clear statutory authority and issuance by the department of a final rule establishing website accessibility standards.” The letter urges the Department to “provide guidance and clarity with regard to website accessibility under the ... ADA.”

As we have been reporting, there has been a continuing uptick in website accessibility lawsuits against retailers and other businesses with an online presence. Recognizing the surge of lawsuits, the letter states that “businesses of every shape and size throughout the country are being threatened with legal action by private plaintiffs for unsubstantiated violations of the ADA. This problem is expanding at a rapid rate since the Internet allows such actions to be filed from anywhere, and there are no restrictions or limitations on making such complaints. The absence of statutory, regulatory, or other controlling language on this issue only fuels the proliferation of these suits since there are no requirements these complaints have to meet.”

Notably, the letter references the *Domino’s Pizza v. Pizza* case, which we [reported on previously](#), and notes that the signatories agree with the decision by the U.S. District Court for the Central District of California that “impos[ing] on all regulated persons and entities a requirement that they ‘compl[y] with the WCAG 2.0 Guidelines’ without specifying a particular level of success criteria and without the DOJ offering meaningful guidance on this topic ... flies in the face of due process.”

While the signatories recognized that “[i]t is important for Congress to act,” they urged the DOJ to provide “basic direction on compliance” and “to help resolve this situation as soon as possible.”

For more questions or more information, contact the authors, or any member of our [Retail](#) team.

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