

The Risk Manager

The Latest News on Managing Your Risk



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PART II: IS YOUR WEBSITE ADA COMPLIANT?

Accommodations for the Visually Impaired

[In Part I](#) of our series, we examined the June 2017 Florida District Court ruling in *Juan Carlos Gil v. Winn-Dixie Stores, Inc.*ⁱ, which found in favor of a plaintiff's claim that a grocery store's website was in violation of Title III of the ADA, and ordered the store to bring its website into compliance with the Web Content Accessibility Guidelines (WCAG). In this paper, our focus turns on the increase in website accessibility claims that arose after that ruling and most notably a significant ruling in favor of plaintiffs in a New York Federal Court.

THE LEGAL LANDSCAPE AFTER THE RULING IN THE SOUTHERN DISTRICT COURT OF FLORIDA AND THE DIMINISHING REQUIREMENTS FOR WEBSITE ACCESSIBILITY CLAIMS

Since the ruling in *Juan Carlos Gil v. Winn-Dixie Stores, Inc.*, Florida has seen an increase in website accessibility litigation with the second most claims filed in 2018 behind New York, which has approximately 630 website accessibility lawsuits filed in the first half of 2018.ⁱⁱ New York's increase in website accessibility suits follows an August 2017 ruling in the US District Court for the Southern District of New York.

Additional Resources

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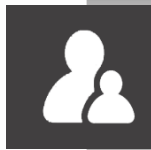
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ABOUT BEECHER CARLSON'S EXECUTIVE LIABILITY PRACTICE

Beecher Carlson's Executive Liability Practice is comprised of experienced and knowledgeable attorneys, brokers, and claims advisors dedicated to identifying your risks and best positioning you in the marketplace. Our forward thinking practice was the first to provide revolutionizing analysis of our clients' Directors & Officers and Cyber risks.





In *Andrews v. Blick Art Supplies, LLC*, Victor Andrews, a visually impaired individual, brought an ADA claim against Blick, a retail store chain with an online presence selling art supplies, after Andrews was unable to use Blick's website to buy their products. According to the suit, the website was not designed according to the Web Content Accessibility Guidelines (WCAG 2.0); the well-established industry standards for making website content accessible to a wider range of individuals with disabilities, including blindness and low vision.ⁱⁱⁱ

In its decision, the Court found that Blick's website fell under Title III of the ADA after rejecting Blick's argument that a mere cyber presence is not considered a "place of public accommodation" under the ADA. Whereas the Florida District Court in *Winn-Dixie* found Title III applicable on the basis that the store's website was "heavily integrated" with a physical Winn-Dixie store location, the court here, in *Blick*, broadly interpreted "place of public accommodation" to include websites without a connection to a physical location. Thus, *Blick* answered the question left open in *Winn-Dixie*: whether a website itself could be considered 'place of public accommodation' under Title III of the ADA. The result is an expansion of the types of businesses covered by the ADA in New York.

AGENCY REGULATIONS NOT REQUIRED TO DETERMINE VIOLATION OF THE ADA

Also of importance, the Federal Judge in *Blick* found that courts do not need agency regulations, such as accessibility standards set by the Department of Justice (DOJ), to decide whether a website violates the ADA. The argument has been made that without meaningful guidance from the DOJ, a request to impose liability under the ADA for a businesses' alleged failure to abide by accessibility standards set out in WCAG 2.0 would violate the website owner's due process rights. This argument, however, has not only been rejected in *Blick* but also in *Lucia Markett v. Five Guys Enterprises LLC* – a similar website accessibility class action suit decided in July 2017, in the US District Court for the the Southern District of New York.^{iv} Without requiring agency regulations or further guidance by the DOJ, ADA claims may

continue to be brought for non-compliance with the industry standards set out in WCAG 2.0.

Interestingly, California's State Courts have taken a similar view to the New York Federal Court when determining violations of California's civil rights statute – the "Unruh Civil Rights Act" – that prohibits discrimination on the basis of disability. In *Thurston v. Midvale Corp.*, the Superior Court of Los Angeles County interpreted a website accessibility claim under the Unruh Act in light of website accessibility decisions under the ADA.^v The court found the restaurant defendant violated the Act after rejecting the argument that requiring the restaurant to have an accessible website, without regulations or further guidance from the DOJ on accessibility standards, violated due process. Similar state court rulings signal that businesses should not only comply with WCAG 2.0 to reduce risk of litigation for violations of the ADA, but should also comply with WCAG to avoid possible litigation resulting from violations of state civil rights statutes.

With increased rulings in favor of plaintiff's, and approximately 20 percent more ADA website accessibility claims in the first half of 2018 than all of 2017, businesses with websites should ensure their compatibility with the latest guidelines to decrease their vulnerability to this type of litigation. Website accessibility claims, however, are only a portion of the overall increase in ADA lawsuits. 2018 is projected to have the most ADA lawsuits in the past six years with 4965 suits filed in the first six months of 2018, indicating a possible 30 percent increase over 2017 by the end of the year.

Companies seeking to mitigate risks presented by the threat of ADA litigation can do so with employment practices liability coverage. As the legal community monitors for similar verdicts throughout the country that could eventually set further precedents for the purview of the ADA, employers should process the effects of this decision and consider the scope of their policies to ensure that such litigation will be addressed. Beecher Carlson's Executive Liability Practice offers innovative solutions to companies seeking to limit the risk of this type of litigation with the proper insurance coverage.

ⁱ *Gil v. Winn Dixie Stores, Inc.*, No. 1:2016cv23020 - Document 63 (S.D. Fla. 2017)

<http://law.justia.com/cases/federal/district-courts/florida/flsdce/1:2016cv23020/488749/63/>

ⁱⁱ ADA Title III, Seyfarth Shaw LLP, July 17, 2018 <https://www.adatitleiii.com/2018/07/website-access-and-other-ada-title-iii-lawsuits-hit-record-numbers/>

ⁱⁱⁱ *Andrews v. Blick Art Materials, LLC*, 268 F. Supp. 3d 381 (E.D.N.Y 2017) Case No. 17-CV-767
https://www.gpo.gov/fdsys/granule/USCOURTS-nyed-1_17-cv-00767/USCOURTS-nyed-1_17-cv-00767-3

^{iv} *Markett v. Five Guys Enters. LLC*, 2017 U.S. Dist. (S.D.N.Y. July 21, 2017) Case No. 17-cv-788 (KBF)

^v *Cheryl Thurston v. Midvale Corporation et al*, Superior Court of California, County of Los Angeles (2017) Case No. BC663214

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