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Healthcare Sector is Newest Target for Website Accessibility Lawsuits

Legal Update

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UPDATE: *HCA Holdings, LLC holdings was sued in federal district court on January 25, 2017. The Complaint alleges that 159 hospital and clinic websites operated by HCA and its affiliates are non-accessible to visually-impaired users and therefore violate Title III of the Americans with Disabilities Act. Click here for the full text of the Complaint, **Frazier v. HCA Holdings, Inc.** For more information, read "HCA, Owner of 100+ Hospitals, Sued for 'Inaccessible' Websites Violating ADA."*

The sharp rise of website accessibility litigation and demands that impacted retail, fast-food, financial organizations, banks and education sectors in 2015 and 2016 has expanded to target the **healthcare industry, including: hospitals, clinics, health insurance** as well as related providers such as **drug stores** and **optical stores**.

Accessibility Litigation Explosion in 2015-2016

As reported in *The Wall Street Journal*, along with scores of trade publications and other sources, 2015 and 2016 witnessed an explosion of federal litigation against businesses that operate websites typically alleging that failure to provide an "accessible" website violates the Americans with Disabilities Act (ADA) along with a variety of state and local laws such as California's Unruh Civil Rights Act.

Businesses that were sued or subject to public demands included: Domino's Pizza, Wells Fargo, Home Depot, Harvard University, H&R Block, MIT, Toys"R"Us, Potbelly, the NBA, Charles Schwab, PetSmart, Southwest Airlines and hundreds of others. In addition to these public actions, based upon my personal experience representing clients, I estimate **several thousand demand letters** have been sent by plaintiff law firms.

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Although the law remains unsettled, the Department of Justice has taken the position that the ADA applies to websites and apps, and multiple courts have agreed, at least at the summary judgement phase. An example can be found here.

Expansion into Health Sector

Around a dozen high-volume plaintiff law firms, including Carlson Lynch, Lee Litigation Group, Scott Dinin, Stewart Murray, Joseph Manning and Lainey Feingold bring the majority of lawsuits and public demands.

Below are a few examples of public lawsuits and settlements:

- **Tenet Healthcare**, operator of **Coral Gables Hospital**, **Hialeath Hospital** and **Hanemann University Hospital** in Florida, is named in a **class action complaint** on behalf of all blind individuals. The complaint alleges that the hospitals' websites are not accessible to blind individuals using screen-reader technology, and therefore violate Title III of the ADA as well as Section 504 of the Rehabilitation Act.
- **WellPoint** agrees to a public settlement with the **Law Office of Lainey Feingold**. Settlement terms include modifications to websites and apps to bring them in conformance with the Web Content Accessibility Guidelines (WCAG) Version 2.0AA. The Law Office of Lainey Feingold has also announced ADA and accessibility-related settlements with **Humana**, **Anthem**, and **Rite Aid**.
- **CAC Florida Medical Centers** have been sued by high-volume plaintiff Andres Gomez in Federal District Court in Florida, alleging that the Medical Center's website was not accessible to the plaintiff, a blind individual, in violation of the ADA.
- **Omar Weaver Rosales**, an attorney in **Texas**, has sent demand letters to multiple healthcare organizations. Rosales' demand letter includes the dramatic claim:

"Since your website does not comply with Federal law, you must immediately self-report to the Department of Health and Human Services (DHHS) and forfeit any Federal funds received [from Medicaid or Medicare] until you have completed recertification."

Actions to Reduce Risk / Tips for Website Operators

In light of the uncertain state of the law along with the high volume of plaintiff activity, the following actions may reduce risk for website operators even though such actions may not be legally required:

- Add alt-text, captions and other features that make a website more accessible to those using screen-reader and other assistive technology.

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- Review the Web Content Accessibility Guidelines (WCAG) 2.0 standards and contact a website accessibility consultant to help with this process.
- Enhance your telephone customer support.
- Adopt an internal and external facing Accessibility Policy.
- Require vendors providing website, app, advertising or other services to provide “accessible” work product and services in conformance with the ADA and WCAG2.0AA.
- Obtain Cyber Liability Insurance with coverage for ADA and Rehabilitation act claims.
- Do not throw out or ignore a demand letter. Seek qualified legal counsel before responding to any demand.

If you have received a website accessibility demand letter, lawsuit or would like legal help with compliance and proactive defensive measures, contact Steve Helland.