

Maryland Lawyer

News and analysis of legal matters in Maryland

ACCESS - OR - AVARICE

Depending on which side you ask, 'serial lawsuits' either exploit an ADA loophole or enforce, at long last, the rights of disabled people

BY BEN MOOK

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Jeri Wasco, who has cerebral palsy and uses a wheelchair, visited a Hyattsville shopping center recently and found curb ramps that were too steep and no elevators going to the second floor.

She filed a federal lawsuit last week against the center's owners. It was, in fact, one of four she filed last week against Maryland businesses, alleging violations of the Americans with Disabilities Act of 1990.

Counting those four, Wasco has been a plaintiff in 38 lawsuits alleging violations of the ADA in Maryland. She has also been involved in another nine ADA cases filed in the District of Columbia.

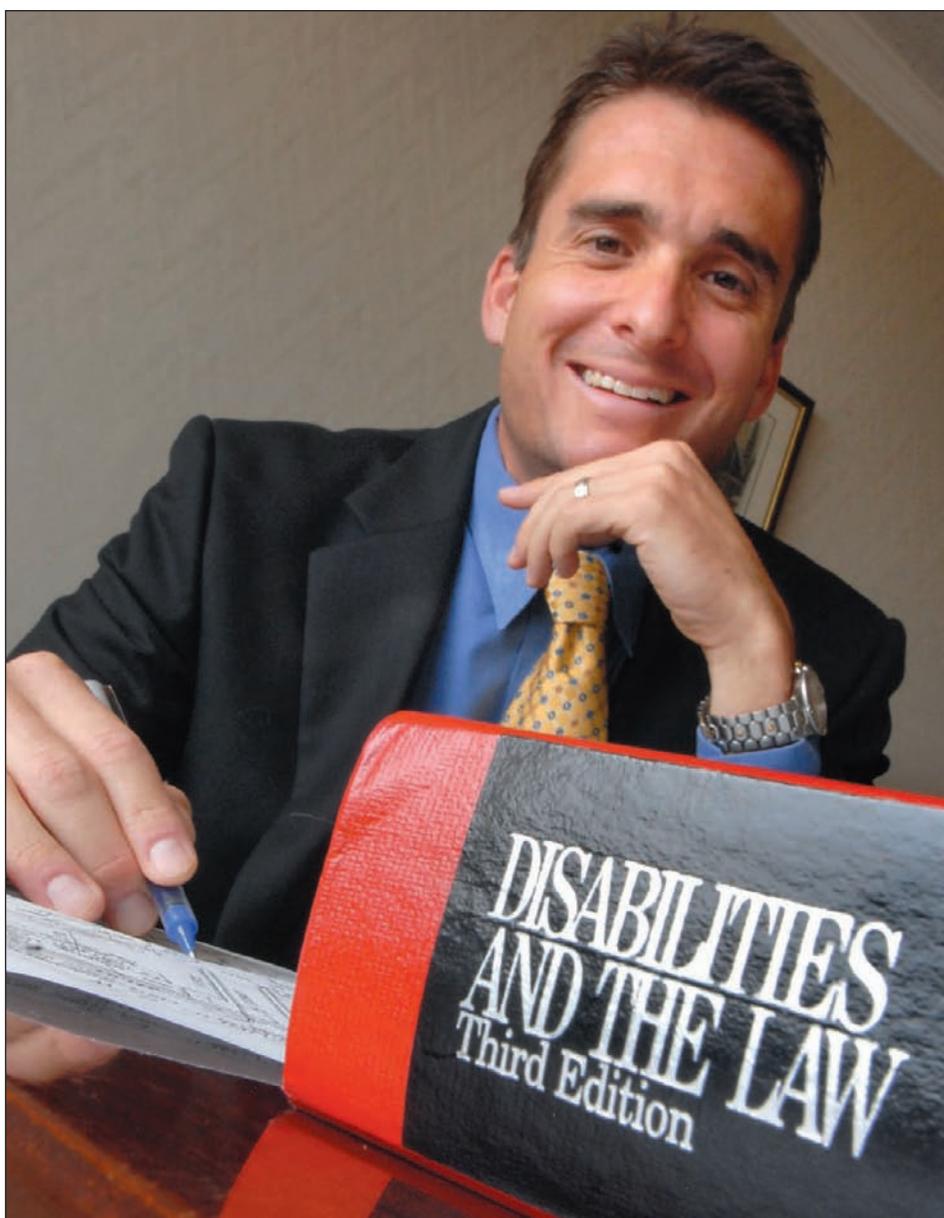
Depending on who is asked, lawsuits like Wasco's are either a fair and effective way to bring businesses into compliance with the law, or "drive-by" litigation spurred by filing mills in which attorneys glean high legal fees for quickie lawsuits.

Those who file multiple lawsuits often cite frustration over years spent battling with poorly designed bathrooms and parking lots, even 17 years after the ADA took effect.

"People in wheelchairs are hardy souls, but they get fed up after a while," said Russell Holt, who has been a plaintiff in 10 cases.

On the other hand, many business owners claim they are unaware of violations, and instead of being given a chance to redress the issues, they find themselves the target of federal litigation.

"The whole goal of the ADA is accessibility, not to make a few unscrupulous attorneys rich," said Melvin R. Thompson, vice president of government relations for the **Restaurant Association of Maryland**.



Joel Zuckerman has been lead or co-counsel in more than 100 cases involving violations of the Americans with Disabilities Act. The lawsuits draw a mixed response, with owners decrying the suits as a quick way to generate legal fees and some advocates for the disabled praising them as the best way to ensure compliance.

Serial filers

Enacted in 1990, the ADA requires businesses to remove barriers that discriminate against patrons who have disabilities. Even establishments that predate the act must comply to the extent they can “reasonably” do so.

While the law does not authorize money damages for the plaintiffs, a lawsuit can leave the defendant business liable for legal fees — its own and the plaintiff’s — as well as any needed modifications. Not surprisingly, the vast majority of businesses opt to settle before trial.

Maryland’s experience with repeat filers is not unique: Across the country, thousands of lawsuits have been filed, often by a small number of lawyers specializing in disability law. Oftentimes, the same plaintiff is used repeatedly.

A review of U.S. District Court records by The Daily Record shows that since 2003, 126 lawsuits have been filed in Maryland by two attorneys on behalf of fewer than a dozen individuals. Most of the lawsuits involve restaurants, bars and shopping centers ranging from the 87-year-old **Cozy Restaurant** in Thurmont to a **McDonald’s** in Laurel.

Of those cases, 71 have been filed on behalf of three people, with Wasco alone being involved in 38 cases. Two other defendants account for another 33 cases, with fewer than a dozen other people named in the remaining cases.

Joel Zuckerman, who has been lead or co-counsel in 108 of those cases, said they boil down to the basics: someone goes to an establishment and notes violations. In the past, he said, people with disabilities were often unaware there are remedies available; either they found a way to adapt, or they simply did not go back to that establishment.

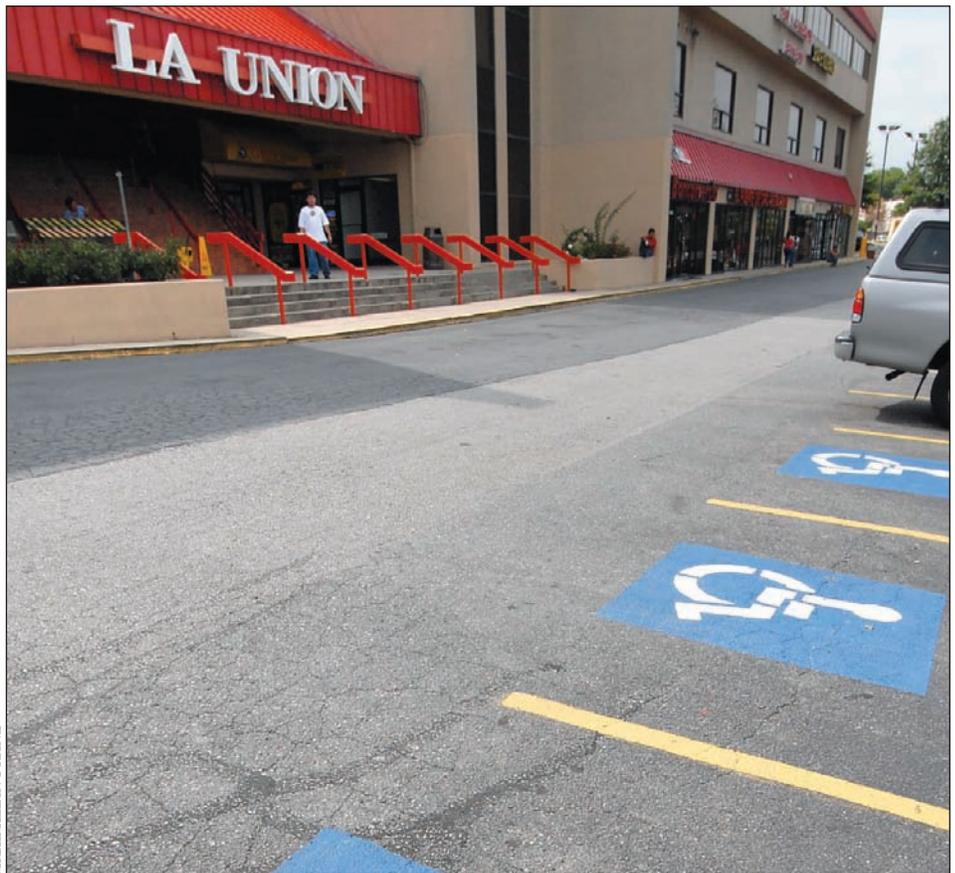
While the law has been around for nearly two decades now, he said, there are still many businesses that are, knowingly or unknowingly, out of compliance.

“There’s a need for this kind of work, and just like any business, there will be people there to fulfill that need,” Zuckerman said.

As for the issue of fees, Zuckerman said case settlements average \$4,000 to \$5,000. This includes fees paid to experts and consultants to assess the business’ efforts. He said on average, cases involve anywhere from 10 to 15 hours of his time.

“The bottom line is, it’s a business and if I’m going to continue to work for my clients, then I have to be able to pay the fees.”

Until last year, Zuckerman worked out of the Rockville office of **Schwartz Zweben & Slingbaum LLP**. Headquartered



MAXIMILIAN FRANZ

In one of five ADA violation lawsuits filed last week, a woman with cerebral palsy who uses a wheelchair filed suit against the owners of La Union Shopping Center, in Hyattsville. Alleged violations include an insufficient number of accessible parking spaces and no elevator at the multi-level facility.

in Hollywood, Fla., the firm has filed thousands of similar ADA lawsuits across the country.

Partner Gene Zweben also said the cases hinge on the central point that clients want to go somewhere, should be able to, but encounter barriers when they do and the most effective way to address that issue is through a lawsuit.

“It’s amazing the ADA has been out 17 years and there are still a tremendous number of businesses that don’t comply,” Zweben said. “People were enthusiastic about going to places after the ADA was enacted. Over the years though, they noted it wasn’t progressing as expected and they have gotten frustrated.”

Zweben said legal fees differ depending on the case since they bill hourly at around \$260 to \$285 per hour. On average, legal fees in most cases can range from \$7,500 to \$10,000.

Thompson, of the Restaurant Association, said businesses recognize the need to provide customers with disabilities with an experience equal to everyone else, and they want to comply.

The problem, Thompson said, is that businesses often are unaware they are not

in compliance, and before they know it they are facing a federal lawsuit and paying thousands of dollars in legal fees to fight an unbeatable case.

“There’s really nothing that can be done, and these attorneys realize nothing can be done,” Thompson said. “They’ve recognized a loophole in the law.”

Boiling point

Holt, though, sees it differently.

The 10-time plaintiff, who has used a wheelchair since a car accident 21 years ago, said he spent years trying to talk to businesses in an effort to get them to make changes, with mixed results.

His frustration level rose over time, and he reached the boiling point after a visit to an ocean-side resort when a town bus with a chair lift stopped, but the driver pulled away after telling him he did not have time to bring him aboard.

“I just got fed up, I said, ‘something’s got to change,’” Holt said.

For him, and for other so-called serial plaintiffs, litigation amounts to advocacy work after years of not seeing changes made in spite of the law’s existence. A lawsuit brings about change after letter-writing

campaigns and speaking to owners failed to.

"If a crime has been committed, you call the cops," Holt said. "If you go into a restaurant, though, and you can't get into the bathroom, that's a crime, too, but you can't call the cops."

After his experience with the bus, he learned about ADA lawsuits. When he would frequent an establishment with violations that should have been addressed, he signs on as a plaintiff.

"I just want it repaired...," he said. "These are only places I've been to and plan to go to again. I swore to do that only."

Since 2005, seven of the suits have settled.

"To me, these lawsuits are a last resort: I hate to have to do it, but they do work," Holt said. "When you talk to them, the business owners will pat you on the head, and say, 'we'll do it, we'll do it,' and nothing ever gets done."

David C. Sharp, 54, has used a wheelchair since 1979, an after-effect of polio he contracted as a child. On a trip to a Costco store on Russell Avenue in Gaithersburg earlier this year, he noticed that the designated handicapped parking spaces were placed on areas where the slope of the ground was more than 2 percent.

After a letter to the store from Zuckerman brought no redress, he filed suit last Thursday.

"I didn't think it was possible to use the legal system to resolve the problems. I never really thought about it," said Sharp, who's filed 15 ADA suits in Maryland. "Now, I really see how the law is on the side of people with disabilities."

Chance to fix it first

Business owners, though, say there should be some grace period between being notified of the violation and being subject to federal suit, with responsibility for the other side's legal fees.

On average, the repairs account for a few hundred to a few thousand dollars, but

legal fees can reach into the tens of thousands of dollars, sources on both sides said.

The age of the ADA isn't always the issue, since small businesses may have reason to believe that they are in compliance.

Monroe Jon Mizel, a Kensington-based lawyer, squared off against Zuckerman on behalf of a Gaithersburg bar owner. The owner was told the property was compliant when he bought the business, and obtained and renewed a county liquor license that required ADA compliance.

"He had been assured the premises was in compliance with the ADA, and of course it wasn't," Mizel said.

While his client was "innocently in violation," he added, "there's nothing to fight about if you're wrong."

Another case in point is the Greenbelt location of **Jasper's Restaurants**. Co-owner Fred Rosenthal said Jasper's never had any notice before it was served with a federal lawsuit listing ADA violations in the bathroom, front entrance and bar area.

Rosenthal said had he been given time to make the repairs, he would have. Instead, he said, he spent \$20,000 in legal fees defending the business, before the case was settled out of court for an undisclosed amount.

"In the restaurant industry we've been battling the problem with this federal law, since it's one of the few laws that never gives businesses a chance to remedy the problem before a lawsuit," Rosenthal said. "So, it's created a cottage industry for lawyers to take advantage of this."

Rosenthal said efforts have been under way to draft legislation that would grant a 90-day buffer to make repairs before a lawsuit can be filed. The so-called ADA Notification Act has not progressed in Congress, and until it does, Rosenthal said there is plenty of room for lawyers to take advantage of the current system.

"It's got to be the easiest thing in the world, high legal fees and minimal work,"

Rosenthal said. "Everyone is scared to death to go to federal court, so they settle. It should be embarrassing to the legal profession to let this go on."

Zuckerman said complaints like Rosenthal's are common when working ADA compliance lawsuits. While he had filed the majority of the lawsuits without giving the business owner a grace period, he now does.

He said when he joined the Rockville firm of **Maxwell & Barke** last year the decision was made to start the process by sending business owners a letter where they would acknowledge the barriers and come up with a plan for removing them within 60 days.

"The biggest complaint we heard was, 'if you had told us first, we would have done it,'" Zuckerman said. "So, essentially, I called their bluff."

Zuckerman said he had some initial reservations that his business would taper off, but he backed the decision for two reasons. He said his clients felt better about giving the business a last chance and, if the letter was ignored, it would make the case even stronger in court.

"Maybe one out of 20" business owners sign a plan that heads off court action after receiving the letter, he said.

"We're not out to make the business owner's life miserable," Zuckerman said. "We just want the barriers removed in a reasonable period of time. If they sign the letter, we're essentially working pro bono."

And for the record, Mizel (who doesn't think he ever got a letter from Zuckerman in the Gaithersburg case) doesn't hold a grudge against his opposing counsel.

"I don't think he's doing the Lord's work," Mizel said, "but it's not an awful way to make a living."

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